

ORIGINAL

IN THE MATTER OF:

**Law Enforcement Review Act
Complaint No. 3578**

AND IN THE MATTER OF:

A hearing pursuant to section 17
of *The Law Enforcement Review
Act*, R.S.M. 1987, s. L75

BETWEEN:

H A ,

Complainant,

- and -

CONSTABLE D. T

Respondent.

TRANSCRIPT OF PROCEEDINGS had and taken before The Honourable Judge Newcombe, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 14th day of June, 2000.

APPEARANCES:

MS. H. A , in person.

MR. P. MCKENNA, for the Respondent.

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

1 June 14, 2000

2

3 THE COURT: Who might Ms. A be?

4 MS. A : I am.

5 THE COURT: Are you going to be conducting these
6 proceedings on your own behalf, ma'am?

7 MS. A : I have asked Brian Savage to speak for
8 me, if that's okay with you.

9 THE COURT: Certainly. I know Brian Savage from
10 many years ago when he was with the RCMP, and he's quite
11 familiar with courtroom protocol and procedures, so if you
12 would like him to act as your agent, so to speak --

13 MS. A : Um-hum.

14 THE COURT: -- no problem with that, I presume,
15 sir?

16 MR. MCKENNA: Your Honour, I have an extreme
17 problem with that, and I'll explain it to you.

18 Mr. Savage, at all material times to this
19 complaint, was the lead investigator and was an employee of
20 The Law Enforcement Review Agency. He was -- he conducted
21 an interview with the respondent officer. He was present
22 during a meeting to attempt to resolve the matter
23 informally. During the course of the meeting with the
24 respondent officer he was an employee of The Law Enforcement
25 Review Agency. During the meeting to attempt to resolve the
26 matter informally he was again an employee of The Law
27 Enforcement Review Agency. He had conduct of this file,
28 investigated it. During the course of the conduct of the
29 file I would have had conversations with him, he would have
30 had conversations with the Commissioner, and as a result of
31 his dealings on the file we end up here today with the
32 charges that the respondent officer is facing.

33 We have never, ever, before been faced with a
34 situation like this. I am advised at 10 to 10 this morning

1 that Mr. Savage has been asked to perform this function. I
2 am quite surprised that Mr. Savage does not view it as a
3 conflict of interest, and quite surprised, and quite
4 disappointed that he has not turned it down.

5 THE COURT: Well, there are conflicts and
6 conflicts, I suppose. Mr. Savage may not have the same
7 conception of conflict as you might, with your legal
8 background, but that's not really the -- what, what do you
9 have to say about that, Ms. A ? ? You see you can't have
10 Mr. Savage sort of riding two horses in the same race.
11 That's, that's --

12 MS. A : Well, I think --

13 THE COURT: -- my sort of analogy.

14 MS. A : -- I think Mr. Savage would be very
15 fair in it, and I --

16 THE COURT: Well, what you think --

17 MS. A : Pardon?

18 THE COURT: What, what you think is only half of
19 what's important.

20 MS. A : I know.

21 THE COURT: It's what the respondent thinks is
22 fair, too. I mean both sides have to feel that they're
23 getting an even shake.

24 MS. A : I understand that.

25 THE COURT: Now then the next problem though is
26 Ms. A , if left to her own devices will be very much at a
27 disadvantage opposite not only very competent counsel, but
28 counsel who's practised in this forum on a number of prior
29 occasions, and what does it do for the perception of justice
30 to see a complainant have the stuffings kicked out of her,
31 simply because of temerity, lack of experience in this, in
32 this forum. It makes a laughing stock of this and it brings
33 these types of proceedings into disrepute, in my eyes as
34 well as --

1 MR. MCKENNA: I understand --
2 THE COURT: -- the public's eyes.
3 MR. MCKENNA: -- I understand your comments, Your
4 Honour, and before --
5 THE COURT: We discussed this once before, I
6 think, in a matter that was resolved --
7 MR. MCKENNA: Yes, Your Honour.
8 THE COURT: -- without going into the, the merits
9 of it.
10 MR. MCKENNA: Yes. Before you make your ruling
11 on, on Mr. Savage and perhaps it may be a moot point,
12 because I was about to propose to you, Your Honour,
13 something that I have proposed to provincial judges in the
14 past, and something that in, in at least three cases that I
15 can --
16 THE COURT: You may sit down, Ms. A .
17 MR. MCKENNA: -- in at least three cases that I
18 can think of provincial judges have mediated these types of
19 disputes, and I heard the word fair being used by Ms. A ,
20 and it may be at the end of the day that, that with your
21 assistance we can mediate a fair resolution of this
22 complaint.
23 THE COURT: Well, I don't consider myself a
24 mediator. I have no training, no background, and while from
25 time to time one tries to encourage a compromise again this
26 is a case where there's a professional negotiator, one might
27 say, an advocate on, on one side and nobody on the other,
28 and using whatever modest influence my position has will not
29 intimidate counsel, but may very well intimidate a neophyte
30 regardless of the merits of her complaint. That's the
31 problem, as I see it. No different I should think than
32 Crown counsel, who are always singularly reluctant to
33 approach an unrepresented accused and propose a compromise,
34 a plea bargain. They're in the very vulnerable position

1 then of having it subsequently said that they took advantage
2 of their legal training and experience to bamboozle a
3 layperson.

4 MR. MCKENNA: I understand your concerns --

5 THE COURT: I don't know -- see I have -- this is
6 probably the thinnest file in the ministry of justice or the
7 court system. I have a letter directed to Ms. A , I have
8 a letter from Mr. Wright, a couple of letters, simply
9 advising Ms. A of matters of form and, and date, and
10 time. I know nothing about what gave rise to this
11 complaint, what evidence is intended to be called, whether
12 it be Ms. A herself or other, other witnesses. I have
13 no idea what witnesses you might choose to call, if, if any,
14 in due course, but then Ms. A 's in the very unfortunate
15 position again of trying to cross-examine witnesses, and I'm
16 -- I don't mean to patronize you, Ms. A , but --

17 MS. A : I know. I understand.

18 THE COURT: -- I expect that you are as ignorant
19 of legal matters as I am of architectural or engineering or
20 matters in which I don't earn my --

21 MS. A : If I would have known my rights when
22 this happened I wouldn't be here now.

23 THE COURT: Well ...

24 MR. MCKENNA: Your Honour --

25 THE COURT: What's -- maybe I'll just hear from
26 Mr. Savage --

27 MR. MCKENNA: Fine.

28 THE COURT: -- what position, if any, he takes
29 on --

30 MR. SAVAGE: Your Honour, Mrs. A called me on
31 the weekend. I wasn't aware that the hearing was coming up
32 today. I came in and met with her yesterday, and explained
33 the procedures to her, and she asked if I could assist her
34 here today, and I said I was quite willing to do so. Mr.

1 McKenna is quite right. I was the investigator, I did
2 interview Cst. T , I was present during an informal
3 resolution, and Mr. McKenna himself was present during all
4 of these procedures, and I'm here today just to give Mrs.
5 A a hand, if you so rule.

6 THE COURT: I, I commend you on, on your rendering
7 her some, some assistance, but I think that the assistance
8 that you -- properly to be able to provide her would be
9 basically as to form, as opposed to -- form and procedure,
10 as opposed to standing as her agent or advocate in, in
11 dealing with matters evidentiary. It's really a distinction
12 with very little difference, I suppose, in the, in the eyes
13 of the public as to why you are in a conflict position and
14 counsel is, is not, having been involved as I say from, from
15 early on in, in discussions and no doubt gaining information
16 from Ms. A , as counsel may have, may have done. Why
17 then should Sgt. Savage or Staff -- as he -- as I remember
18 him, Savage, be in a conflict and counsel not. That's what
19 the public might say.

20 What is -- I won't ask you -- Ms., Ms. A , I
21 won't ask, because you might inadvertently misstate your
22 position, but as you understand the complaint can you just
23 give me a thumbnail of --

24 MR. MCKENNA: Yes, Your Honour. There is a
25 complaint of excessive force in the grabbing of Ms. A 's
26 arms. There was a bit of a dispute as to whether it was one
27 arm or both, and being told to sit down on the couch, and
28 there is a complaint regarding use of language.

29 THE COURT: And, and at this attempted mediation
30 that you, you spoke of what position -- can you give me just
31 a, a piece of Ms. A 's position and of your client's
32 position?

33 MR. MCKENNA: Your Honour, I would except that --

34 THE COURT: You've suggested I'm engaged in some

1 sort of mediating efforts. I was just wondering what has
2 been done and whether --

3 MR. MCKENNA: Yes.

4 THE COURT: -- positions are hard and fast, or
5 whether in your judgment there's, there's room for, for
6 movement on either side.

7 MR. MCKENNA: I think, I think there is room for
8 movement, Your Honour, and I'm, I'm -- there is a bit of a
9 problem with the question that you've asked me in that the
10 contents, the subject of, of discussions in such a meeting,
11 are by law privileged. If you indicate a willingness to
12 continue the process then I would be instructing my client
13 that, that this is a continuation of that process, and that
14 therefore my opinion would be we waive the privilege and
15 keep on going, and see if we can make some headway. I
16 thought we made some headway during the course of, of the
17 meeting, and -- but we didn't quite get there, and I think
18 with some more assistance I think we could, but otherwise
19 it's a privileged conversation that takes place.

20 THE COURT: Ms. A , let's just suppose that we
21 continued with the hearing, and I heard your evidence, and
22 the evidence of all other witnesses, and at the end of the
23 day came to the conclusion that, that you were right, there
24 was language used which was inappropriate, and perhaps the,
25 the officer didn't need to use the force that, that you felt
26 he, he did, what would you like me to do, what would you
27 like to happen to, to this officer?

28 MS. A : Well, Your Honour, I feel like this,
29 this -- I really can't even call him a man, I think that he
30 is going to hurt somebody and hurt somebody bad, and that's
31 why I brought this forward. I have --

32 THE COURT: Well, what would, what would you like
33 me, me to do? I presume you're, you're familiar with some
34 of the recommendations that I can make from the very, very,

1 very mild to the very, very, very severe, in terms of
2 consequences.

3 MS. A : No, I'm not aware of anything like
4 that. I just -- we had a meeting, he didn't even say he was
5 sorry, he sat across from --

6 THE COURT: No, no, he has somebody representing
7 him, and he would be under instructions not to say anything
8 which could come back to, to haunt him, and an apology could
9 be construed as an admission of all of the complaints
10 against him, so that -- and I'm not saying that's what he
11 was told by counsel, I'm just saying that that may have been
12 the case. Is an apology something that --

13 MS. A : No, I wouldn't accept an apology from
14 him now. He didn't grab both of my arms and sit me down, he
15 grabbed my right arm, this arm, and --

16 THE COURT: Well, we're not giving evidence now.
17 I'm just wondering what, what you wanted me to, to do at the
18 end of the day, and I was simply asking you that,
19 prematurely though, though it may be, because of counsel's
20 comments and I, I just want to know where you're coming
21 from, so to speak, and, and how much leeway we, we have here
22 to arrive at a, at a position that is mutually satisfactory
23 both to you and the officer, because Ms. A -- I'll put
24 it this way.

25 I'm not a Solomon. I am not in any way infallible
26 and after hearing evidence I will have to come to a
27 conclusion --

28 MS. A : Um-hum.

29 THE COURT: -- which may result in both parties,
30 you and the officer, leaving here very unhappy, but most
31 certainly one of you will go out the door singularly unhappy
32 thinking that your case has not been given proper weight
33 and, and -- I would rather each of you leave a little bit
34 unhappy, do you see the point, but generally satisfied that

1 justice was done and a compromise was arrived at which you
2 can live with, in leaving the court with a certain amount of
3 self-respect and dignity and the same with this officer --

4 MS. A : Well --

5 THE COURT: Just a minute. Because we're about to
6 enter into these proceedings then, if it doesn't seem that
7 there's a common ground and as I say I'm going to make a
8 decision which is either going to result in this man being a
9 very unhappy man, subject of perhaps considerable
10 punishment, or you leaving very unhappy thinking that I
11 haven't given your case and evidence the weight and
12 seriousness that you feel it deserves, but if there's no
13 common ground then we'll have to proceed with the hearing of
14 the evidence, and leave it to me to make my decision, as
15 best I can.

16 MS. A : Well, I guess we'll leave it up to
17 you, sir.

18 THE COURT: Very good. Well, we're going to be
19 hearing evidence obviously. In view of the fact Ms. A
20 is not represented I'm certainly of a view that Mr. Savage
21 can, can sit with her for, for whatever morale support, and
22 just give her sort of procedural advice, et cetera, et
23 cetera. I agree with you. Yeah, he ought not be on his
24 feet and examining Ms. A in chief or cross-examining
25 witnesses, but since she's unrepresented it's either Mr.
26 Savage or she's on her own, and I say, and I don't think
27 that's fair. The only other thing would do -- would be her
28 get counsel and go through the proper agencies, if she's not
29 in a position to afford it, but since we've got the day set
30 that's sort of a waste of time, isn't it, unless she makes
31 that request.

32 You've spoken to her, Mr. Savage. I'd be
33 interested in -- and she certainly can speak her mind, and
34 I, I don't mean to belittle her or patronize her in any way,

1 but as a result of your conversation with her are you
2 satisfied that she's able to, to conduct matters, this kind,
3 on her own behalf?

4 MR. SAVAGE: Yes, yes, I am, Your Honour. She
5 speaks very well --

6 THE COURT: Yes, she seems -- that's --

7 MR. SAVAGE: -- and she's an intelligent woman,
8 and as I said before she asked me to give her some
9 assistance, and that's why I'm here today.

10 THE COURT: Well, if you'd be so kind -- as I say
11 I have no objection to you sitting with her and helping her
12 in matters of procedure and in form, rather than have me
13 interrupt time after time, and try to put her back on the
14 right path. Would that be a compromise your client can live
15 with, sir?

16 MR. MCKENNA: Maybe if you could give me a moment
17 to speak with Mr. Savage.

18 THE COURT: All right. I'll just remain here.
19 Court stands adjourned for a few minutes while counsel speak
20 privately.

21

22 (BRIEF RECESS)

23

24 THE COURT: Yes, Mr. McKenna.

25 MR. MCKENNA: If you would just give me one
26 moment, Your Honour.

27 THE COURT: Yes.

28 MR. MCKENNA: Your Honour, we have reached an
29 agreement. It involves the application of Sections 26 and
30 28 of The Law Enforcement Review Act. I'll wait until you
31 get those sections in front of you.

32 THE COURT: Yes. I just happen to have the Act
33 flipped open to that page for no purpose, other --

34 MR. MCKENNA: Thank you.

1 THE COURT: -- than I was just going through it.

2 MR. MCKENNA: Yes.

3 THE COURT: Yes. Go ahead, Mr. McKenna.

4 MR. MCKENNA: On the -- as a result of the
5 agreement that we have reached the respondent officer will
6 admit the disciplinary default, pursuant to Section 26, and
7 pursuant to Section 28, and again according to agreement
8 between the parties the respondent officer will accept a
9 written reprimand to be placed on his service record, and
10 waives the necessity of hearing submissions and details of
11 the service record, which is provided for under Section 28,
12 that is a mechanism that is typically -- it's, it's like a
13 speak to sentence and it is something that follows typically
14 findings of guilt, and it is usually a separate hearing. We
15 are waiving that because we have an agreement as to penalty,
16 that being a written reprimand to be placed on the service
17 record.

18 THE COURT: All right. And that is satisfactory
19 to you, is it, ma'am? I note that you were outside and
20 perhaps talking to Mr. Savage.

21 MS. A : Yes.

22 THE COURT: And you know Mr. Savage's background.
23 He's a retired Staff/Sergeant with the RCMP, he's familiar
24 with not only obviously RCMP but Winnipeg Police Services'
25 practices and procedures, and the effect that a written
26 reprimand may have on this officer's, at least short to
27 middle term, career prospects. It can in the end result,
28 should there be further difficulties, such as the one that's
29 brought you here, obviously like a snowball going downhill
30 it will, it will build, and a written reprimand on his
31 record will stand him in very bad stead indeed if, as you
32 said, you were concerned about him carrying on in this
33 manner, and potentially hurting someone.

34 MS. A : That's all I'm afraid of, sir, is that

1 he's going to hurt someone bad.

2 THE COURT: Well, short of say drastic, and there
3 are more drastic things that could be done to him, but this
4 is not insignificant by any stretch, as I'm sure Mr. Savage
5 has, has told you, so your, your --

6 MS. A : No, but --

7 THE COURT: -- complaint, your complaint has been
8 admitted, both complaints in fact as, as being true --

9 MS. A : Um-hum.

10 THE COURT: -- and while no apology may have been
11 expressed to you personally by admitting that what you said
12 is true one can take it if you hear -- even if you hear
13 nothing more --

14 MS. A : Yes.

15 THE COURT: -- that he is admitting his, his wrong
16 to the Court, if not directly to you personally, so from my
17 perspective I would think you've achieved what you set out
18 to, to achieve, ma'am.

19 MS. A : Yes, I did.

20 THE COURT: And by the same token the disciplinary
21 proceedings are not insignificant and if I were sitting in
22 the constable's chair now I'd be very well aware that this
23 type of conduct (inaudible) at his very, very serious
24 jeopardy.

25 MS. A : I thank you.

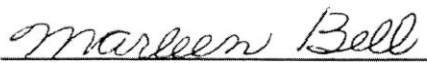
26 THE COURT: All right. Pursuant then to the
27 agreement, as, as outlined, and pursuant then to Section
28 30(1)(g) then in each case the matters then are settled by
29 consent by the -- is liable then to written reprimand in
30 each instance, and you're here on a regular basis, and I am,
31 am not -- are there any provisions with respect to costs, et
32 cetera, et cetera?

33 MR. MCKENNA: There are no provisions for costs
34 except for --

1 THE COURT: Being that that's --
2 MR. MCKENNA: -- damage to property, Your Honour.
3 THE COURT: All right. So there's no -- nothing
4 further to be said --
5 MR. MCKENNA: Nothing further.
6 THE COURT: -- on the issue of costs and, and the
7 like?
8 All right. In due course you'll receive a, a copy
9 of -- in print, as it were, of what you've heard put on the,
10 on the record this morning, ma'am.
11 MS. A: : Thank you.
12 THE COURT: And likewise, obviously, as counsel
13 has advised you, you'll receive the same and you'll hear
14 further from the appropriate authorities in due course.
15 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, MARLEEN BELL, hereby certify that the foregoing pages of printed matter, numbered 1 to 12, 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 skill and ability.


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