

IN THE MATTER OF: Law Enforcement Review Act
 Complaint No. 5951

BETWEEN:

F. D.

Complainant,

- and -

CONSTABLE M. D.
and CONSTABLE M. C. ,

Respondents.

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 27th day of January, 2004.

APPEARANCES:

MR. S. BOYD, for the Commissioner.

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

MR. F. D., in person.

JANUARY 27, 2004

THE JUDGE: Mr. D. ?

MR. D. : Yes, yes, sir, Your Honour.

THE JUDGE: Perhaps you can just take a seat behind the dais.

All right, as this morning, then, the, if you wish to formally put it on the record, fine, but the commissioner is applying to have a voice in these proceedings.

MR. BOYD: Yes, that's right, Your Honour, it's --

THE JUDGE: Any problem with that, Mr. D. ?

MR. D. : I didn't quite hear what you said, Your Honour.

THE JUDGE: The commissioner, whose decision you are appealing --

MR. D. : Yes, sir.

THE JUDGE: -- has requested standing, it's called. But what that really means is he's requesting permission to speak to some of the issues if it's through it's representative, if it's thought necessary. Do you have any problem with that?

MR. D. : I guess not, Your Honour. I brought a, I brought a -- some stuff, summaries that I wanted to present as well, so.

THE JUDGE: Absolutely. Oh yeah, you get that opportunity.

MR. D. : Thank you.

THE JUDGE: And you understand what it is that you have to do. The onus is on you, on a 50-50, 51-49 basis to try to convince me that the commissioner erred in his deciding to proceed no further with your complaint. Now that error can be an error of fact, error of law, error of what lawyers called mixed fact and law. But essentially, you've got to convince me in either large or in small way

there was an error. And then there are certain tests that I apply, some of them pretty stringent tests, some of them pretty loose tests.

MR. D. : Yes.

THE JUDGE: But, the commissioner's duty, as I understand it, just to put it in layman's terms, is really is the gatekeeper. A lot of the people have an axe to grind. And I'm not pointing at you, Mr. D. --

MR. D. : Yes, I understand.

THE JUDGE: -- but you know a lot of people don't like uniforms. They don't like, whether they're judges or police officers. They resent authority and they try to make trouble for them. Sometimes it's because they are criminals who think the best defence is a good offence. They're trying to convince people that they were unfairly treated. So, for instance a statement that they made will not be admitted in court and they use this avenue as a secondary path to try to establish their bona fides. So we have a commissioner to basically separate the wheat from the chaff. Now, --

MR. D. : As a gatekeeper --

THE JUDGE: -- I hope that you have the commissioner's letter explaining to you what he took into consideration in coming to the decision. It was sent to you by registered mail, I hope.

MR. D. : I don't know if I got it registered mail, but I ended up getting the whole, the whole briefing, sort of.

THE JUDGE: All right, good. The reason I specifically ask is because a gentleman who appeared this morning in like circumstances had, had his letter of explanation sent to the wrong address.

You'll mention that to the commissioner, will you Mr. Churley (phonetic)?

So, that caused us some problems.

MR. D. : I've, I've --

THE JUDGE: You've got it, Mr. D. , that's good.

MR. D. : Yeah, I finally received it. I've been at this since 2002. So, I did -- it took the time, but it finally got to me about two weeks ago.

THE JUDGE: Well, as you see by the number on your report, 5951, since --

MR. BOYD: Your Honour.

THE JUDGE: Yes.

MR. BOYD: I'm not certain, but I believe Mr. D. may be referring to our brief that we filed.

THE JUDGE: Well, we'll see what else. Did you have --

MR. BOYD: I think --

THE JUDGE: -- did you get one of these?

MR. D. : Yes, sir.

THE JUDGE: All right.

MR. D. : Yes, Your Honour.

MR. BOYD: I don't know if he's referring to the letter that you're asking him about.

MR. D. : Yes.

MR. BOYD: It appears that he does.

THE JUDGE: Well, maybe you can check that to see if it's the letter that you will understand I was referring to.

MR. BOYD: That's the letter that I understand you were referring to, dated, is it March 27, 2003?

MR. D. : Of '03.

THE JUDGE: All right. Now, as far as you are concerned, Mr. D. , does the commissioner's letter set out your complaint, reasonably? You know, the time, date and place --

MR. D. : Yes.

THE JUDGE: -- and circumstances that you were travelling and your truck, I believe it was --

MR. D. : Yeah.

THE JUDGE: -- a half ton or whatever you were --

MR. D. : Yeah.

THE JUDGE: -- wig wags went on, you were pulled over.

MR. D. : Yes.

THE JUDGE: You alighted from the vehicle, et cetera.

MR. D. : Yeah.

THE JUDGE: It gives your complaint.

MR. D. : Not -- to an extent.

THE JUDGE: Well, it's a little shorter than --

MR. D. : Right, there's some --

THE JUDGE: -- your original statement.

MR. D. : Right.

THE JUDGE: And he then goes on, as I recall it, to set out the side of it that was put forward by the four officers who were subject of your complaint.

MR. D. : Yes.

THE JUDGE: Two of them basically --

MR. D. : Yes, and two --

THE JUDGE: -- the plain clothes people really didn't have much to do with this, as I understand it.

MR. D. : No.

THE JUDGE: They were sort of late on the scene and early leaving the scene.

MR. D. : That's correct, Your Honour.

THE JUDGE: So, do you have any real complaint about the commissioner saying there's no real cause of complaint against the plain clothes officers?

MR. D. : When I, when I asked what they were doing here, they --

THE JUDGE: Backing up their brothers.

MR. D. : Right. That's --

THE JUDGE: Well, that's what --

MR. D. : -- what he told me, I'm here to back up my brothers.

THE JUDGE: Well, that's what they refer to, lawyers call each other brothers or friends, my learned friend, that's a way of speaking. But, they heard there was a stop which in their view might result in problems and you know why they thought that, Mr. D. .

MR. D. : No.

THE JUDGE: Well, they were labouring under the impression that your son had been picked up and charged the day prior. Don't -- ma'am, if you're going to sit there shaking your head when I'm looking at this man, you're a distraction.

MS. D.: I'm sorry, Your Honour.

THE JUDGE: You know, I'm looking in his direction and --

MR. D. : Oh, sorry, sorry, Your Honour.

THE JUDGE: No, no, that's quite all right. You're not -- she's not legally trained. She's got an opinion about this which is different from the commissioner's, I feel sure. And she's indicating that. But, the information that I have on this file, whether right or wrong, is that the police believed that your son, was it S.?

MR. D. : Yes, sir.

THE JUDGE: Had been picked up and charged with illegal possession of an AK 47 sawed off shotgun, military grade explosive, the day before.

MR. D. : I'm not sure if it was the day before, Your Honour.

THE JUDGE: Well, that's what the police thought

shortly before.

MR. D. : Right. And I, and I don't believe that they knew anything of that when they stopped me. That was all circumstances that followed.

THE JUDGE: Do you have any reason --

MR. D. : Well, in the times, in the -- I was going to pass you --

THE JUDGE: No, do you have any reason for suspecting that they did not have this information at the time?

MR. D. : In their calls to the -- apparently with all of this stuff I ended up getting, there was calls here made to --

THE JUDGE: Dispatch.

MR. D. : -- right, to the dispatch. And as we go through it, they say there's two occupants in my car, in my truck. It's 18 minutes after they get any kind of response after they stop me. I wrote some of the items down, so you could see that I believe that they had no idea who they were dealing with when they stopped me.

THE JUDGE: All right. Now, you've got the commissioner's file, maybe you can help me with this, Mr. D. . You'll see in the upper right hand corner of the file there are numbers, running from the rear most or the bottom document, which is number 1, do you have this file? Running through to --

MR. D. : Oh, yes, I do, Your Honour. I see -

-

THE JUDGE: -- closing numbers --

MR. D. : -- here 1, 2, 3, 4, 5.

THE JUDGE: No, that is in the materials filed --

MR. D. : Okay.

THE JUDGE: -- the legal materials. What portion of the commissioner's file did you receive?

MR. D. : I believe I got it all here.

THE JUDGE: All right.

MR. D. : I believe so, Your Honour.

THE JUDGE: So, one portion of it --

MR. D. : Okay.

THE JUDGE: -- should have, if you've got all of the file, should have pages numbered, as you see in the upper right hand corner?

MR. D. : Yes, yes, Your Honour.

THE JUDGE: And when you're referring to the material, you could help me by referring to page number so I can flip and get to it and we look at the same document that you're referring to.

MR. D. : Yeah, I know, yeah.

THE JUDGE: All right. So, what you might do is when you're replying and I'm putting a question out and you're replying, if you say you have a document, could you refer to the document --

MR. D. : Okay.

THE JUDGE: -- and then refer to the number, so I can flip through this file and catch up to you.

MR. D. : It would be out of here, I summarized it.

THE JUDGE: All right. There's a summary on it.

All right, these are the notes of Constable C., with some interjection from his brother officer and from Mr. McKenna, who I take it was -- this was at an interview with the commissioner?

MR. MCKENNA: Yes, I -- there would be some notes. Perhaps if you could just tell me the number, the page numbers.

THE JUDGE: Well, I don't have them.

MR. MCKENNA: 42 to 50?

THE JUDGE: These might be they, but what I was

provided with isn't numbered, so let me check.

MR. MCKENNA: I see. Then I'm assuming that what you've just been given, I don't have a copy of.

THE JUDGE: Well, you are right on top of things. You've got your copies.

All right. So, just start with whatever document you think is important to bring to my attention, sir.

MR. D. : Well, I guess what I'm trying to say, Your Honour, is basically in a nutshell, I'm just trying to say that I was on my way home this evening, and I wasn't doing anything out of any ordinary circumstances to anybody. And I stopped my car, went and got gas, my truck, and as I was leaving the gas station, going through a parking lot in Northgate, off McPhillips, I was pulled over by the police officers.

I pulled over, I -- the two officers got out of the car. I got out of the car and locked my door. I was nervous, I do it quite often if I got into 7-11 or anything like that, I always seem to lock my door, leave my car running or I just don't want anybody getting into my car. And the officer started yelling at me to get back into my truck.

At that point, I, I was nervous. I don't know why at each door they were yelling like that at me. And I had my keys in my pocket and I didn't want to even reach into my pocket. Like, I was -- because I hear, I mean, I've heard that on Broadway Avenue here, for instance, officers shoot at taxi cabs with people they are trying to arrest, putting holes through windows.

But, I was nervous and I put my hands on the deck of my truck and I didn't move. I thought I would be safe there. Telling me to get back into the truck. I just stayed there and I moved just towards them a little bit like this, and that was it. I could have sworn he said to me,

Get down on the ground. I got down on the ground, he walked right over to me, hand-cuffed me. This whole thing took about 30 minutes --

THE JUDGE: Okay, the officers refer to that as securing the scene, that is, making sure that they are in control of what they -- from time to time may suspect to be a potentially dangerous situation. Now, if --

MR. D. : If --

THE JUDGE: I mean, the commissioner, if he is going to doubt that the officers had the information that you suggest they didn't, he's going to have to have some evidence. They say they knew that they believed you or son to be Hells Angels Associates. They say that they had seized illegal firearms from your son the day prior, or brother officers had seized it. Is that true? Was your son charged with possess a prohibited weapon, possess explosive devices?

MR. D. : Yes, he was, Your Honour.

THE JUDGE: And was -- yes. Now, there is no --

MR. D. : Yes, but --

THE JUDGE: -- there is no such thing as guilt by association, but there is reasonable suspicion by association. You know, the old idea --

MR. D. : Does that make it a law for two different individuals?

THE JUDGE: Yeah.

MR. D. : It's a two tier law then?

THE JUDGE: I would say that police officers who are approaching an individual who they have reason to believe is associated with criminals who have been in recent possession of firearms, will act in a different fashion for their own safety, than they might if they are approaching a person about whom they have no information.

What is your general field of employment?

MR. D. : I work for CP Rail, Your Honour.

THE JUDGE: All right.

MR. D. : I've been there 27 years.

THE JUDGE: Dangerous work, or it can be depending on where you work. Are you in the yards, running trades?

MR. D. : In the yards.

THE JUDGE: In the yards. Dangerous.

MR. D. : See, I --

THE JUDGE: No, do you see what I'm getting at, it's --

MR. D. : Yes, but I believe --

THE JUDGE: And you take certain precautions in the course of your employment approaching certain situations with caution because you feel there may be potential risk. Now, police officers are no different than you and I. And if they are told things, even if the things may not be true, if they are given information which causes them to act with caution, perhaps over caution, you see, this seems to be one of the things that the commissioner took into consideration when he made his ruling.

MR. D. : Well, I think he, I think --

THE JUDGE: Ma'am?

MS. D.: I'm just trying to help him because he's -- I --

THE JUDGE: He's doing quite well.

MS. D.: -- I did the whole brief, so I --

THE JUDGE: He's doing quite well.

MS. D.: -- so I just want him to make my points.

MR. D. : I'm not making the points that I was -

MS. D.: That are important points to make, the discrepancies in the report --

MR. D. : Like, there was --

MS. D.: -- that's all I'm trying to get across to

him.

MR. D. : -- this, like, in the file that I gave you there, Your Honour, there's discrepancies in the time frame and everything else and in the -- what, what the -- see, I believe, Your Honour, that this was all brought on after the fact, after the stop.

THE JUDGE: And that they made this up to sort of justify --

MR. D. : The stop.

THE JUDGE: The stop.

MR. D. : And I'm no Hells Angel Associate, and I, I've been working at a place for 27 years.

THE JUDGE: I'm not suggesting that you're a crook or a criminal --

MR. D. : Well, well --

THE JUDGE: -- or a fellow traveler. I'm just saying that this was on the file --

MR. D. : Yeah, but --

THE JUDGE: -- just to justify why they approached you in the fashion that they did. Now, if there's --

MR. D. : They -- in -- Your Honour, in my brief there, though, they didn't know who I was. They're calling to the station, they're asking for -- when you look through it, they didn't know and they're -- they didn't know who I was. They took no notes. They came back six months later and said, We were briefed that night before we came to work, on you. During the whole stop, Your Honour, the officer told me, I can stop anybody I want, any time I want.

THE JUDGE: Under the provisions of The Highway Traffic Act, that's very close to being true.

MR. D. : I understand that, Your Honour, but also rummage through my vehicle, went through the back seat, underneath, through everything. Well, they had no idea at that point that either I was carrying guns or anything like

that. And I wasn't. Or who I even was. They -- in the briefs, you look and read, they didn't even know who I was. They thought there was two people in the truck. Like this seems to be built up after the fact.

Sure, what I'm getting at, Your Honour, is, is that how can they stop me like this and rummage through my vehicle, give me warnings, Oh, your windows are too dark, I could give you a ticket.

My licence, I went and -- I lost my licence in the seat of my car. I went to renew a little trailer had and, and the lady there told me you have to have a driver's licence. I went right down to the Motor Vehicles and got a driver -- but the girl only gave me a pink slip. And I said, well, I don't have a picture. She said to me, you can drive with the pink slip. When the officer stopped me, he says, You know, I can give you a ticket because you don't have a, you don't have your picture with you. I said, well, the lady didn't give me the picture at the Motor Vehicle Branch.

THE JUDGE: But, they didn't give you a ticket. But you meant he was just generally --

MR. D. : Right.

THE JUDGE: -- chirping in a sort of a --

MR. D. : And I, and I thought if this is, if this is the way they're pulling everybody over, doing this kind of thing, I mean, I, I think that this is wrong.

THE JUDGE: Well, I've been pulled over from time to time and --

MR. D. : Well, I don't --

THE JUDGE: -- they're sometimes curt, but I haven't experienced what you've complained of. But, you know, they're usually curt and business like. They're not your best buddies, obviously.

MR. D. : I don't want to end up here in front of

Your Honour after being shot at, for instance. I don't want them to pull out a handgun and run down the street and shoot at me in a taxi cab, saying, he's a Hells Angels Associate, or his son did this, that and the other. My son doesn't live with me. This is what I'm -- this is why I'm here today, to show you they didn't know who I was or what I was. And when they identified me it was long after the stop, way after.

THE JUDGE: Well, I presume, yes, I presume they got your driver's licence. You said you showed it to them.

MR. D. : Right.

THE JUDGE: So, they had your name on that, maybe your name on the registration.

MR. D. : Some 20 minutes after the stop.

THE JUDGE: Yeah.

MR. D. : In the records of their own, some 20 minutes after the stop they finally identified who I am. And then I was -- I'm trying to be courteous with them. I'll open the door, if you need anything I'll get it for you. No, they just went right through the truck and threw things, like -- I --

THE JUDGE: I can guess what they --

MR. D. : -- I think it was (inaudible) search. They didn't have no right to search my vehicle.

THE JUDGE: That may very well be true.

MR. D. : Unless I was a Hells Angel Associate. But, they didn't know that at the time.

THE JUDGE: Well, it may still be an unlawful search. Any search without a warrant is presumed to be unlawful and no, they probably wanted -- apparently your vehicle had been seen in around the Public Safety Building, et cetera. I wouldn't be surprised at all --

MR. D. : I didn't --

THE JUDGE: -- yeah, if they wanted --

MR. D. : -- realize, Your Honour, that --

THE JUDGE: -- if they wanted to see what was under the seat of your vehicle. I wouldn't be surprised at all.

MR. D. : If I wanted --

THE JUDGE: Because police officers are by the nature suspicious of people that they suspect have links to criminals.

MR. D. : And to be, and to be discourteous? I mean, how much do you -- what, what do I say? Do I phone them before I go and say, I'm going to go downtown for a drive in my truck. Is it okay if I drive by the Public Safety Building? Would you mind? Is this what I got to do, to call them? I mean, I don't understand this.

THE JUDGE: Well, I'm not here to answer your questions, Mr. D. . I'm just saying I can see what may have been in their mind. But, you have to convince me, I'll say on the balance of probabilities, and maybe you could start -- your lady with you says that she prepared a brief. Maybe you could refer to that, and if you follow that, she won't have to prompt you.

MR. D. : I'll just read the whole thing.

Well, I'm not very good at this, Your Honour, so I'm --

THE JUDGE: That's okay, I've got all afternoon.

MR. D. : Thank you, sir.

THE JUDGE: I know you're not legally trained, that's why I've been discussing this in a pretty informal basis with you --

MR. D. : Thank you, Your Honour.

THE JUDGE: -- so, don't panic.

MR. D. : I put down here, first in reviewing the history of the unit number 103 that evening, it should have been noted that the call came at approximately 23:55. The

vehicle is stopped at approximately 00:04. And that's from the back of the -- in the back there, Your Honour, it tells you what the police officers car were doing.

This is confirmed by officers. In officers' notes, it is stated that, M. got on the radio, said, We had the vehicle stopped, gave the licence and number of occupants. This is, this is done as a matter of routine. Clearly when reviewing the history, this was not done. When you, when you review the history of this.

It wasn't until approximately 00:18, 00:20 that the licence and registration --

THE JUDGE: Now, just a minutes, please, could I interrupt you, sir. You said, clearly when reviewing the history, what history are you referring to, please?

MR. D. : That was of the stop in their --

THE JUDGE: Was this a transcript of radio transmissions?

MR. D. : Yeah, yes, it's in the back.

THE JUDGE: All right. I saw that, but I didn't know what it was.

MR. MCKENNA: Your Honour, perhaps I can assist you for just a moment, please, in that regard?

THE JUDGE: Yes, if you would, please, Mr. McKenna.

MR. MCKENNA: Thank you. What Mr. D. is referring to is found at pages 18 through 20, and I'll let you --

THE JUDGE: Yes, I have them here.

MR. MCKENNA: -- all right. It is what's called a unit history. And you'll see at the top it says, N103, November 103, so that is the cruiser car, 1 being District 1. It was a downtown cruiser car and it was -- the unit personnel on there are the two constables involved. This is not a record of radio transmissions, Your Honour. This is a

record of typed communications between the communication centre and the constables. The constables --

THE JUDGE: The on board computer.

MR. MCKENNA: With the on board computer. There would be radio transmissions and as you know from reading the file, the officers received intelligence from undercover units, who, of course, you don't need much imagination to know, don't have an on board computer. Everything they do is by radio and it will not be found in here.

So, all of the information that is provided to them in order to trigger this stop will not be found on this. This is strictly typed communications between the communication centre and the officers.

THE JUDGE: All right.

MR. MCKENNA: You would need a tape, if one exists. I don't think that they tape those communications.

THE JUDGE: You understand why the undercover cars don't carry the same equipment as a regular car.

MR. D. : This wasn't an undercover car that stopped me.

THE JUDGE: No, no, the car that they were in communication with. As Mr. McKenna has pointed out, is --

MR. D. : If you go to 19, Your Honour, on the page, you'll find that they do give licence numbers here and communicate --

THE JUDGE: Yes.

MR. D. : -- you know, and they said here that they did for me as well. But, they didn't.

THE JUDGE: All right.

MR. D. : And I wouldn't know what an undercover car was.

THE JUDGE: Well, an undercover car with no insignia, and as you would expect just using your God given common sense, they don't have aerials sprouting from roofs

and the like, to give away the fact that there's an on board radio. They often just use cell phones to communicate one with the other.

MR. D. : So --

THE JUDGE: I can just tell you from my general experience. That's what I usually hear and Mr. McKenna then was pointing out that there was an undercover car involved in this.

MR. MCKENNA: If I could just help you one, one further, Your Honour.

THE JUDGE: Please.

MR. MCKENNA: Thank you. If you look at where it starts at 23:55, Your Honour, and it's outservice invest assists surveillance with spot check. Assists surveillance is, that is telling you that somewhere in the background there is a surveillance unit --

THE JUDGE: Yes.

MR. MCKENNA: -- that has asked for this to happen. Every other line that you see after that, up until 00:58 where it's back in service, is with regard to this call. If you look at any line where you have round brackets and then it's S345 --

THE JUDGE: Yes.

MR. MCKENNA: -- that is a staff person. S is staff person. These are people in the communication centre. When you see CPIC, that is an automatic line that comes on when they request CPIC check. And where you see a star on the bottom, is when the communication, the typing has been initiated from the car. So --

THE JUDGE: All right.

MR. MCKENNA: -- the star comes from the car, S345 comes from the communication centre and the assist surveillance is by radio with a unit that's --

THE JUDGE: Well, that helps --

MR. MCKENNA: -- they're out there on the street.

THE JUDGE: That helps me interpret, and it may help you, Mr. D. --

MR. D. : Yes, sir.

THE JUDGE: -- where these calls originated from. CPIC is Canadian Police Intelligence Computer, that's to do a run down on the registered -- when they find the registered owner.

Ma'am?

MR. D. : She's just reading -- I'm sorry, Your Honour, but she's --

MS. D.: I'm sorry, if I can just --

MR. D. : I'm, I'm a little nervous and I'm a little mind boggled about it, because I understand what you're saying --

THE JUDGE: All right, you and I are going to get along fine, talking one to the other.

MR. D. : Yes, sir.

THE JUDGE: As I say, we've got time here. There's no, there's no rush.

MR. D. : It, it shows this call they made, and 14 minutes later they get a response.

THE JUDGE: All right. Well, there may be an unanswered question there, but it may be answered by Mr. McKenna's hypothesis, that they were in a receipt of a telephone message. They were working hand in glove with this undercover unit. Now, the undercover people were watching you, for whatever reason, right, wrong or indifferent. They don't want to burn themselves by pulling you over themselves. So, they get a uniform car, complete with your wig wags and you know, whatnot, to pull you over --

MR. D. : I understand.

THE JUDGE: -- to take a look see. They thought

someone else was with you. Maybe someone else had been with you, maybe they hadn't. But, they wanted to take a look see. That's what it seems to me. Now, you may not like that.

MR. D. : Well --

THE JUDGE: You may think that's an intrusion on your privacy, but it's a generally common, generally known --

MR. D. : I, I --

THE JUDGE: -- police practice.

MR. D. : I don't think I was under investigation.

THE JUDGE: It may be they thought there was a second person in the vehicle and they wanted to know who was in the motor vehicle. This is how they gather intelligence.

MR. D. : Yeah, they said there was one occupant in there. But, Your Honour, I was on my way home. And all this maybe, if, but, whose who, what isn't, what, it's not what really what happened here. I mean, we're bringing the things in saying that, well, they were following me, investigating me, well, they weren't.

THE JUDGE: Well, why do you think they wasted their time with you?

MR. D. : I have no idea. I mean --

THE JUDGE: Well, you think there's --

MR. D. : -- I don't --

THE JUDGE: -- a collateral motive. You think there's some reason that they were picking on you or just picked you out by chance, like pinning the tail on the donkey, going around blindly and just stopping people. I mean, they do that, too. Traffic cars do make --

MR. D. : He, he told me --

THE JUDGE: -- blind stops.

MR. D. : -- he had the right to stop anybody any

time and check their licence and registration.

THE JUDGE: He does, under The Highway Traffic Act.

MR. D. : So, I mean, that's what he did. As far as I'm concerned, this is what he had done, checked me -- but the way he checked me, and what I went through with the discourteous behaviour of them, and on the ground and my truck being searched and the way they talked to me about, Do I have a problem with police officers, do I like police officers, do I have a problem with them. I'm standing, I'm standing on the edge of my bumper, Your Honour, with four officers, hand-cuffed, in a parking lot, a dark parking lot, and what kind of man would say to them, yes, sir, I have a problem with officers. Like, I mean, is it ludicrous, or... I have friends who I went to school with were police officers.

THE JUDGE: Well, lots of people have problems with police officers. If you spent --

MR. D. : But, I --

THE JUDGE: -- if you spent a shift with them, you'd be surprised how many people call them f-ing pigs, you know, they're people who don't -- it's like cat and dog in this world. There are cops and there are people who don't like cops. So, they do take abuse and that was probably a comment the police officer shouldn't have made.

MR. D. : I addressed him as sir. I asked him what seemed to be the problem tonight. I told him my licence was in my pocket. My registration was in my truck. I asked them why am I being pulled over, did I do something wrong, signaled, stop, run a light, speeding, anything, anything, fellows?

THE JUDGE: But, they can stop you without, they can just spot check you. That's what The Highway Traffic Act provides. Now, you weren't ticketed.

MR. D. : No, sir.

THE JUDGE: The police could have made a little more trouble with you, if they really wanted to give you action. They could have called a traffic car in to check your tinting. They didn't do that. They just told you it was a little iffy.

MR. D. : I had only purchased the vehicle -- I didn't realize, Your Honour, that there was a, might have been a problem with the windows.

THE JUDGE: Yeah, but he didn't ticket you for that, and he didn't call a traffic car to check that when he could have.

MR. D. : No. I guess he didn't. But, but, I -

-

THE JUDGE: So, they could --

MR. D. : -- was being very polite to them --

THE JUDGE: -- so, they could've been more oppressive, that's what I mean. They weren't just saying, I'm going to ticket that SOB.

MR. D. : It's --

THE JUDGE: There had probably been a misunderstanding.

MR. D. : I felt, too, and after, after being stopped the way I was, I thought that if this is the general procedure that we've got, with the way that they are handling people, I mean, this is ludicrous. I mean --

THE JUDGE: Yeah, I can see your point.

MR. D. : I mean, they may say to me that a fellow of your, wouldn't be put down on the ground and handcuffed.

THE JUDGE: Well, they would if they thought I had your associations.

MR. D. : But, they didn't know that.

THE JUDGE: But, if, if, and this is the big --

MR. D. : And that's easy to say that he's got some kind of associations. But, I don't. To me, that was an excuse for what they done or what they were trying to do.

THE JUDGE: Well, see, I don't recognize your name and I don't know the circumstances which gave rise to your son's arrest, nor need I, need I know.

MR. D. : Your Honour, does --

THE JUDGE: He wasn't the courier --

MR. D. : -- does that make --

THE JUDGE: -- that was phoned from the jail by a police officer and told to pick up certain articles and deliver them to the police.

MR. D. : Does --

THE JUDGE: Does that ring a bell or is it a different incident?

MS. D.: That the police called him?

THE JUDGE: Well, I just better --

MR. D. : That's, that's a --

THE JUDGE: -- I just better stay away from that.

MR. D. : Your Honour, to me, that's a --

MS. D.: Claiming to be somebody else?

MR. D. : That's --

THE JUDGE: Is that correct?

MS. D.: That's correct, Your Honour.

THE JUDGE: And then he picked up some articles including --

MS. D.: To deliver to the police --

THE JUDGE: -- weapons to deliver.

MS. D.: -- that's correct.

THE JUDGE: All right. That's why I'm saying --

MS. D.: That's correct.

THE JUDGE: -- I don't remember the name, but that's the background to this.

MS. D.: You're aware of it, yeah.

MR. D. : Your Honour, that's not me. That's not me. That's not what I do.

THE JUDGE: I understand that, and there's no guilt by association.

UNIDENTIFIED PERSON: Sure there is.

THE JUDGE: But -- pardon me?

MR. D. : No --

THE JUDGE: Who is that? What is that person there?

MS. D.: I don't know, Your Honour.

THE JUDGE: What did you say?

UNIDENTIFIED PERSON: I didn't say nothing.

THE JUDGE: Well, somebody did. Sure there is.

MS. D.: I didn't say anything, Your Honour.

THE JUDGE: Go ahead. These folks aren't helping you out then.

MR. D. : Sorry, Your Honour.

THE JUDGE: Who is that, by the way?

MS. D.: I don't know who that is, Your Honour.

THE JUDGE: Well, he's got an interest --

MS. D.: I've never seen him before.

THE JUDGE: -- he's got an interest in your proceedings.

MS. D.: I've never seen him before.

THE JUDGE: All right. You're doing quite well, Mr. D. . I may have misheard, but it seemed to me he said, Sure there is.

MR. D. : I'm, I'm just, I don't know how to go about it, Your Honour, and argue, argue the fact with Mr. McKenna on when they stopped me and what they knew and what they didn't know.

I'm here to say to Your Honour, I was driving downtown, coming home from a fellow's place, I got pulled over and this is -- these are some of the things that I went

through. And I --

THE JUDGE: I wouldn't enjoy the experience, I agree with you.

MR. D. : And, and I felt that the commissioner after finding out, for instance, that I was supposed to be a Hells Angel Associate or something or other, that he had relayed to somebody, and which I'm not, and I feel that that is sort of, to me is a defamation of a character, writing to LERA saying to them, we suggest that he's a Hells Angel Associate.

THE JUDGE: Well, your son is allegedly one.

MR. D. : That's --

THE JUDGE: No, no, just a minute.

MR. D. : -- you understand --

THE JUDGE: Your son, your son is allegedly one, a gopher associate of some kind.

MR. D. : My son doesn't live with me, Your Honour.

THE JUDGE: No, no, all right.

MR. D. : And I don't know --

THE JUDGE: In a matter of law, I completely agree with you. But, in investigations, we go by general inferences, call it common sense or hunches, suspicion, and the old story, the apple doesn't fall far from the tree is one of those old saws, which as I say, doesn't put you behind bars, it doesn't mean you are what your son is. But I suppose from the intelligent gathering perspective, they feel that that justifies then in checking out who is in the car, what's in the car, et cetera. Now, I'm not saying it's right. I'm just saying that if you were a shrewd man, with a police background rather than a railroad background, you would probably think along those lines, too.

This lady wants to prompt you, Mr. D. .

MS. D.: Your Honour, I just wanted to know if I

could just help him for a minute. I just wanted to, to --

THE JUDGE: All right, all right.

MR. D. : She wrote --

MS. D.: I just wanted to make a point --

THE JUDGE: Go ahead.

MS. D.: I'm sorry.

THE JUDGE: No, no, don't apologize. We're a little stricter here. Lawyers can't get up and argue the same point, one after the other, do you know, on the same side. So, that's why we're a little bit prickly about this. But you're not legally trained, so pitch in and pull up a chair and join him at the lectern, ma'am.

MS. D.: I just wanted to, to --

THE JUDGE: You are, for the record?

MS. D.: I'm Jerry Demchuk --

THE JUDGE: You're Ms. D.?

MS. D.: Yeah, Fred's wife.

THE JUDGE: Thank you.

MS. D.: If you look at, if you look at my notes, my typed notes that I've, I've given you, and it refers to if you look at the police log of Unit 103 --

THE JUDGE: Yes.

MS. D.: If you look at page 20 --

THE JUDGE: Yes.

MS. D.: -- at 0004, which is 12:04, where they --

THE JUDGE: You've got that highlighted with blue?

MS. D.: Yeah.

THE JUDGE: Yes.

MS. D.: Where they say, Move on scene, Maple Glen McPhillips with this vehicle. Now, if you read the notes that I've made from the officer's interview notes, my husband has read that to you. It's the paragraph starting with, First --

THE JUDGE: First, in reviewing the history.

MS. D.: -- in reviewing the history.

THE JUDGE: Yes.

MS. D.: Where it says, in officer's notes, it is stated that, M. got on the radio, said we have the vehicle stopped, gave the licence number, and number of occupants. He says this is done as a matter of routine. And clearly when you review the history, this was not done. It wasn't until 14 minutes later where they are radioing CPIC, where the vehicle licence number is given, two minutes later his name comes back.

So, at this point, they hadn't even identified who the person was when they first made the stop. They didn't know that the driver was F. D. . And yet if you read the officer's notes, there's many contradictions in that they say they know they are dealing with a Hells Angels Associate, but just prior to making that statement, they say they don't know who was driving the vehicle. Well, when did they come to the assumption then that F. D. was the driver, the alleged Hells Angels Associate, when they had not even - he had not even stepped out of the car.

THE JUDGE: Probably when the registered owner came up. They ran a CPIC on this, or they had information from the undercover units by telephone.

MS. D.: No, they, they ran the plate. They knew that it was a vehicle registered to Fred.

THE JUDGE: Yes.

MS. D.: They didn't know who the driver was. It could have been me. And yet --

THE JUDGE: Well, I wouldn't --

MS. D.: -- in their notes --

THE JUDGE: -- I wouldn't make that --

MS. D.: -- they say --

THE JUDGE: -- mistake.

MS. D.: And yet they --

THE JUDGE: I wouldn't mistake you for your husband.

MS. D.: Well, it's dark, it's midnight. You don't know. They can't see. The windows were tinted. So, it's not easy to see into the vehicle. Yet they say, they know they're dealing with an alleged Hells Angels Associate. He hadn't even stepped out of the truck. So, how did they know that.

THE JUDGE: Probably because they had been so informed, if they know. Not by the radio, by the undercover unit. That's what Mr. McKenna was trying to explain. They don't have radios. They don't have on board computers.

MS. D.: Well, that's --

THE JUDGE: Any communication would be made by a handheld radio or a cell phone.

MS. D.: Well, that's fine to say, sure, it's a vehicle registered to him, but they didn't know it was him. How did they know that? That's my question, is how did they know that?

THE JUDGE: They may have got that information from --

MS. D.: They say they knew.

THE JUDGE: Why do you think there was an undercover vehicle involved in this?

MS. D.: I have no idea.

THE JUDGE: Is it not reasonable to accept the fact as Mr. McKenna has pointed out that they were surveilling your husband, and they called in, this marked car --

MS. D.: Oh, so they were surveilling him. He --

THE JUDGE: Yes.

MS. D.: -- wasn't surveilling them. Is that it?

THE JUDGE: Well, maybe he was.

MR. D. : They were saying that I was surveilling

them.

THE JUDGE: Yes. So, therefore they turned on you. Who is this person that's apparently circling the Public Safety Building and following certain police cars.

MS. D.: But, I want to --

THE JUDGE: Does that not make sense or am I, am I losing it.

MR. D. : We're sure turning this into a hearsay thing, Your Honour, like, I mean --

MS. D.: But, they didn't know it was him, Your Honour.

MR. D. : -- why isn't there a statement from the undercover police officers --

MR. MCKENNA: Your Honour --

MR. D. : -- here saying, I, I -- we, like there's nothing.

MS. D.: When were they made aware that --

THE JUDGE: Well, that perhaps should have been --

MS. D.: -- it was F. D. ?

THE JUDGE: -- should have been checked out. And had you made the commissioner aware that you were suspicious of this, maybe he could have, maybe he should have anyway, maybe he didn't do things the way I would have done them.

MR. D. : Yes, sir.

THE JUDGE: Maybe he didn't do things the way you would have done them. And whether that's an error on his part or not, you can convince me.

MS. D.: It showed bias on his part, because he refers in his letter dated March the 27th --

THE JUDGE: And what number do we have on that, ma'am?

MS. D.: There's no number. It's the registered letter that was sent from Commissioner Wright to Fred --

THE JUDGE: All right.

MS. D.: -- saying that there would be no further

--

THE JUDGE: March 27th, 2003?

MR. D. : That's the one I think you asked me about, Your Honour, if I had.

THE JUDGE: Yes, I found it.

MS. D.: Where it says the police report showed when police stopped, you recorded the time and the unit involved. I find it hard to believe that he could have reviewed this in its entirety, because there's too many discrepancies. What the officers say and what truly did transpire on the unit history, they don't, they don't jive. So, there's something the matter.

Now, if somebody was telling you, if he just reviewed the report that the officers made, and the unit history, if somebody is saying to you, this, this person is a Hells Angels Associate, he's -- his son was, you know, caught with weapons, he's been known to utter, utter comments about police. I mean, to me, you're, you're saying he's, he's a bad person. So, you're going to show a bias. You're going to obviously side with the people that are saying these things.

THE JUDGE: You're talking to me?

MR. D. : No, the commissioner.

MS. D.: No, no --

THE JUDGE: All right.

MS. D.: -- the commissioner.

MR. D. : The commissioner, we thought was biased of it.

THE JUDGE: All right, go ahead.

MS. D.: I mean, it's just --

THE JUDGE: I'm trying to play the middle on this, ma'am --

MR. D. : I understand, Your Honour.

THE JUDGE: -- so I just --

MS. D.: No, I'm not very good at this --

THE JUDGE: -- when you said you were --

MS. D.: -- either, Your Honour --

THE JUDGE: -- biased, I just wanted to get that clear.

MS. D.: No, no, no. We just feel there was a bias because of some -- if some lay person was reading this, they would think, holy, like, this guys -- no wonder they stopped him.

THE JUDGE: Well, I'm not a layperson. I read it and that's what I thought at first blush.

MR. D. : It's a wonder they didn't have their guns drawn on me.

MS. D.: Yeah, I mean, you wonder why they didn't. I mean, if you, if you read the report, the officers' reports, I mean, there's just so many things where they contradict themselves, that it's, it's really quite mind boggling.

You know, where -- for instance what I said, where they said that in one minute they say, well, we don't know who, who is the driver, we need to identify him. And yet in the next sentence, they say we know we're dealing with a Hells Angel Associate. Well, when did they come to that conclusion? I don't understand. So, really at that point --

THE JUDGE: All right --

MS. D.: -- they didn't even know who --

THE JUDGE: -- that is the issue, I would think --

MS. D.: They didn't know, yeah.

THE JUDGE: -- which is determinative of how reasonable or unreasonable the officers' conduct was, based on what information they had at their disposal at the time Mr. D. 's vehicle was pulled over or immediately after. I

would say that I would think that this -- the police officers actions in one way or another would be subject to criticism. What type, I'm not prepared to say, but at least within the broadest scope of what is required of officers. If this was just a John Q public that they thought they were pulling over -- well, I don't know even know if this was a traffic car or --

MR. D. : It was a --

THE JUDGE: -- whether it was a general assignment car, general patrol. They don't usually waste their time with traffic stops. That's not what they are charged with doing. You know, the traffic unit does that.

MS. D.: They did a traffic stop some --

THE JUDGE: Well, they did a traffic stop --

MS. D.: -- three hours later.

THE JUDGE: -- but they may, yes, they may. But this isn't what they're out on the road to do.

MR. MCKENNA: Your Honour, if I can assist you in that regard, directly on point. If you look at page 20, you'll see that their call starts at 2355.

THE JUDGE: Page 20.

MR. MCKENNA: Page 20 --

THE JUDGE: Yes, I've got the page.

MR. MCKENNA: All right. You see where the call starts at 2355, assist surveillance?

THE JUDGE: 2355, assist surveillance with spot check.

MR. MCKENNA: I'm following up on the comment that you made that that is not normally what they would do in a general patrol. To help you out, if you look at --

THE JUDGE: No, no, I know you're -- I misspoke if I said that, Mr. McKenna. Yes, they will do that. They will make stops.

MR. MCKENNA: Yes.

THE JUDGE: But they're not enforcing The Highway Traffic Act unless --

MR. MCKENNA: Right.

THE JUDGE: -- there's something egregious --

MR. MCKENNA: Yes.

THE JUDGE: -- or unless if they see somebody run a light.

MR. MCKENNA: Yes.

THE JUDGE: But they're not in the habit of just making traffic spot checks.

MR. MCKENNA: Yes.

THE JUDGE: Unless, of course, they're requested to do so in the course of a broader investigation. Often --

MR. MCKENNA: Well, I think that --

THE JUDGE: -- they'll make these -- I'll tell you what happened.

MR. D. : Yes, Your Honour.

THE JUDGE: This is just because I'm in court every day, so I'm hearing criminal cases --

MR. D. : I understand what you're saying, sir.

THE JUDGE: More often than in cases such as you were alleged to have been involved, it's usually drug stops.

MR. D. : This --

THE JUDGE: They see a dial-a-dope operation going. There's an undercover, a drug undercover car. They don't want to blow their cover. They don't want to burn themselves. So, they'll get a traffic unit or a general patrol unit to put on the wig wags, so the people will think, oh, this is just a traffic stop. And then of course once the car is stopped, they find out who is in, they take a little peek to see if they can see anything tucked under the seat, et cetera. That's more often.

But this wasn't a drug case, so I'm not telling you anything that's applying to your case. I'm just using

that by way of illustrations.

So, while, yes they will do these types of stops, it's not really for the purpose of enforcing The Highway Traffic Act. That's the traffic unit that does that. The driver's licence and registration, that's what they actually want to see.

MR. D. : Yes.

THE JUDGE: They don't have a collateral purpose.

MR. MCKENNA: If I may, I just want to finish the point and show you exactly what happened in this case. If you look at 2350 --

THE JUDGE: Sorry, I thought you had finished, Mr. McKenna.

MR. MCKENNA: No, I'm sorry. At 2350, you'll see they were in fact dispatched to a call. At 2350, they're responding, you know that they're responding because that's the star that's coming from them.

THE JUDGE: Yes.

MR. MCKENNA: At 2354, they are pre-empted off that call, they are pulled off that call to go on to this one. They are specifically pulled off the call to go onto this one.

THE JUDGE: Well, you're better interpreting this than I am, Mr. McKenna, by far. I don't --

MS. D.: Maybe Mr. McKenna could help me understand it then, when they say --

THE JUDGE: Sure.

MS. D.: -- when the officers say in his notes --

MR. MCKENNA: What notes?

MS. D.: Page 49 of the officers' notes.

THE JUDGE: Just let us catch up to you, ma'am.

All right. I've got page 49. How far down the page, ma'am?

MS. D.: Okay, just a second here. Okay, it's

page 49 and it's about three quarters of the way down.

THE JUDGE: All right. When we came on shift at nine-thirty, and after that?

MS. D.: Yeah, but just a second here, I might be on the right page. I'm sorry. It's actually page 47, Your Honour. And it's about half way down, where it says, it starts with, He was stopped at 12:04 a.m., on June 20th, 2002. I think I maybe highlighted your copy, I'm not sure.

THE JUDGE: No.

MS. D.: No?

THE JUDGE: I've got the commissioner's file, actually.

MS. D.: Oh, okay.

THE JUDGE: He just forwarded it over, so that's what I'm referring to, because that has almost of the documents other than the ones that you've just presented to me.

MS. D.: Okay. So --

THE JUDGE: So, it's not highlighted.

MS. D.: Did you find --

THE JUDGE: He was stopped at 12:04 --

MS. D.: Right, on June 20th, 2002, and it says,

I was driving, M. got on the radio, said we had the vehicle stopped, gave the licence number and number of occupants. This is done as a matter of routine. Any time we stop a vehicle, we voice it for officer safety reasons. This done to let dispatch know where we are and other cars in the area know if we need assistance. Always when stopping a gang member or

Associate, we voice this over the air, if we know in advance. We didn't know at this point it was F., but we knew it was his vehicle. We stopped. M. is on the radio. He opens the door and steps outside. I stepped out of the cruiser car and said, stay in your car. I said this clearly, but I wasn't shouting. He heard my instruction. I did this for my safety and my partner's. I know we are dealing with a known Hells Angels Associate.

Okay, when did they come to that conclusion, that they knew they were dealing with a Hells Angels Associate. They just said prior that they didn't know it was F. at that point.

THE JUDGE: True.

MS. D.: And if Mr. McKenna could maybe explain to me on the officers -- the unit history, where, where it says, M. was on the radio, gave the licence number, vehicle stopped, licence number, number of occupants, that this is done just as a matter of routine. Well, if you look at the report, that was not done. And it wasn't for 14 minutes, that the unit typed in his licence number, two minutes later his name came back. So, what happened in that 14 minute span?

THE JUDGE: Well, what --

MR. D. : Every --

THE JUDGE: -- your husband is complaining of, I suppose --

MS. D.: Exactly. I mean, they contradicted

themselves.

THE JUDGE: Ma'am, all right, I will agree with you. But, I'm going to tell you this, that when you and your husband -- were you and your husband to sit down in separate rooms, on Friday of this week, and write down your recollection of what went on this afternoon and what you said to me and I said to you, and what Mr. McKenna said, do you think there would be any discrepancies?

MR. D. : Yeah.

THE JUDGE: It's human --

MS. D.: Oh, I'm sure --

THE JUDGE: -- nature. So --

MS. D.: But --

THE JUDGE: -- so, a discrepancy --

MS. D.: But, Your Honour, this --

THE JUDGE: -- may, may raise some doubts.

MS. D.: Well, right, and that's, that's all that you need to do is raise some doubts.

THE JUDGE: No. You, you have to do more than -- this isn't a criminal trial.

MS. D.: I mean, the report shows you right there, Your Honour. That's not a discrepancy, that's the actual log of the vehicle. They say M. was on the radio, called in, said number of occupants. That's not on here. That was not done. So, was that -- did that just slip their mind? They were only there two months later giving, giving their report.

THE JUDGE: Two months --

MS. D.: This is almost two years.

THE JUDGE: Oh, I understand you, but as I say --

MS. D.: They were only there in September of 2002. This is now of January of 2004.

THE JUDGE: I'm merely trying to point out that memories are fallible. The best intended recollection fades

over time and over two or three days, it fades over two or months more, and two or three years still further. And if it weren't for the written notes --

MS. D.: But, Your Honour, some cases go to court two years later, and I'm sure a judge listens to a person recollecting what happened two years ago --

THE JUDGE: Yes.

MS. D.: -- and uses that as evidence.

THE JUDGE: Yes, and a lot of times there are people who are acquitted for exactly that reason.

MS. D.: A lot of times they're not, though.

THE JUDGE: Ma'am, look, this is -- don't tell me my job. I've --

MS. D.: Oh, I'm not --

THE JUDGE: -- I've appeared --

MS. D.: -- I'm just --

THE JUDGE: Just a minute. I've appeared as counsel and judge in these courts for 37 years. I know how criminal courts operate.

MS. D.: Well, Your Honour, I'm just -- I just want to --

THE JUDGE: Raising a reasonable doubt or raising doubts, and I'll go along with you, if this were a criminal trial, if your husband were being prosecuted and if these discrepancies come up, that that's the sort of thing that can raise a reasonable doubt. Here, there's a little more of an onus --

MS. D.: Well --

THE JUDGE: -- not to show that there's a discrepancy in one of the documents or in between two officers.

MS. D.: Well, you wouldn't think that the officers state clearly in their notes that this is done as a matter of routine, so --

THE JUDGE: Well, it is.

MS. D.: -- if it's done --

THE JUDGE: I can tell you that.

MS. D.: -- as a matter of routine, then I would assume that it would be done. If you do something or if I do something every day as a matter of routine, I would normally do it that way.

THE JUDGE: Normally, yes. But it is a matter of routine. It's part of the police protocol. It's obvious. It's a no brainer. If somebody --

MS. D.: Well, I --

THE JUDGE: -- is shot down like a dog in a ditch, he might lie there for hours, as is happened in the past, with RCMP. Therefore the protocol is when you stop a vehicle, you call in, let somebody know where you are, the licence number of the vehicle, and if possible, if they know the identity of the driver. That's so they won't say be -- die like dogs in a ditch with nobody knowing that they're bleeding to death.

MR. D. : Oh, I understand that, Your Honour.

THE JUDGE: That's the reason, so I say it's a no brainer. So, I thought your wife was saying, well, this isn't standard practice. Why don't they do it. Maybe they didn't do it. But I can tell you it is standard practice protocol.

MR. MCKENNA: Your Honour, I wonder if we might have the person just entered identified, because the last time that this person left with the other one, these individuals were telling us they don't know who they were. So, perhaps --

THE JUDGE: Okay, what's your name, sir?

MR. MCKENNA: -- perhaps --

UNIDENTIFIED PERSON: Chuck.

MS. D.: I didn't know -- I know who he is, that's

my son. The other gentleman I didn't --

MR. D. : (Inaudible) never seen before.

MS. D.: -- know at all.

THE JUDGE: Well, there was a fellow traveler who came in with your son --

MS. D.: I don't know him at all, Your Honour.

THE JUDGE: -- left with your son.

MS. D.: Maybe you know him, I don't know.

THE JUDGE: Oh, you don't know him either?

UNIDENTIFIED PERSON: No.

MR. D. : Well, I, I just want to stay on the issue at hand, Your Honour, of this traffic stop.

THE JUDGE: I would certainly --

MR. D. : I don't what to try to --

THE JUDGE: -- encourage that.

MR. D. : I mean, I don't --

THE JUDGE: Oh, it's --

MR. D. : -- know what's going on here. I'm just interested --

THE JUDGE: This was the fellow that was charged, I understand. You must take me for a fool. I hope he doesn't take similar --

MR. D. : I don't think anybody is trying to take you --

THE JUDGE: But he doesn't know this man came in with him. He leaves. Your son goes out with him.

MS. D.: I told them to both leave. I don't know who that other person was. I've never seen him before in my life.

MR. D. : Never seen him.

THE JUDGE: It doesn't really matter.

MR. D. : No, no, I --

MS. D.: When you got upset about somebody saying a comment, I said, you both better go, whoever you may be.

I don't know who that other person is.

THE JUDGE: All right, it doesn't matter.

MR. D. : We're just here to try to iron this out. I hope we can come to some conclusion.

THE JUDGE: Well, you hope -- I can come to a conclusion.

MR. D. : Okay.

THE JUDGE: What you hope is it's a conclusion in your favour, obviously.

MS. D.: Well, Your Honour, I don't know what else we can say. We've made, we've given you the submissions, that we've gone through the notes that they've made. We feel that Commissioner Wright was maybe somewhat biased in his decision. Because he would have read the -- he looked at the log, but obviously in my eyes, he didn't review it in length because he would have seen the discrepancies between the officer's notes and the log itself, the history.

THE JUDGE: He might, but he might be like myself and not -- didn't interpret it properly until Mr. McKenna was of some assistance to me. Bias is easy to say and people unfortunately in this world will point at every individual, every decision maker and allege bias if they don't agree with it. Now, there are a lot of reasons for coming to conclusions that may be wrong, which do not include bias. Unlike you, ma'am, I make honest errors from time to time.

MR. D. : She does, too.

MS. D.: Oh, so do I, Your Honour.

THE JUDGE: Well, then will we not permit the commissioner the --

MS. D.: Well --

THE JUDGE: -- the privilege of --

MS. D.: -- well, Your Honour --

THE JUDGE: -- having committed --

MS. D.: -- we're here --

THE JUDGE: Just a minute. Committed an honest error as opposed to a biased decision. Because I'm not going to find that he made a biased decision. I may find he erred. But, I'm willing --

MS. D.: Well, I just --

THE JUDGE: I'm willing to accept the fact that it may have -- if he did err, it was an honest error.

MS. D.: I'm not saying it --

THE JUDGE: I can tell you --

MS. D.: -- wasn't an honest error.

THE JUDGE: All right. I can tell you that this commissioner does not throw out cases willy-nilly. I have presided over the hearing of complaints which were pitifully weak, but which he permitted to come forward for a public hearing. So, he doesn't just throw out every case that comes his way. So, I would not, by any standards, say he's biased.

MS. D.: Well --

THE JUDGE: You may disagree with him. He may have overlooked something. But, let's get the bias --

MS. D.: Well, maybe that's what, that's what --

THE JUDGE: -- side of it out of the way.

MS. D.: -- I should be saying then, instead of using the word bias, I should be saying that things were overlooked, which I do state in my written, along with the attached. I mean, it's just, if you read the reports, I -- you know, I don't know how really -- we truly believe that the officers gleaned this information after the fact. They did not know at the time who was driving --

THE JUDGE: There is some evidence to support your decision.

MS. D.: -- who was driving that vehicle, that's, that's our argument. I don't know what else that we can

say. If you look at it, I mean, I've looked at it and I really feel that there are some discrepancies and things that were overlooked. If you compare the unit history with the officers' notes and with them saying, well, we knew we were dealing with an alleged Hells Angels Associate. Yet, just prior to that, they said we don't know who we're dealing with.

THE JUDGE: I will admit there's, yes, I will agree with you that there is some ambiguity.

Mr. McKenna, any comment?

MR. MCKENNA: Your Honour, if I may, just to clear up a discrepancy here. They were pre-empted, pulled off a call to come to this one. The documents clearly indicate that they were asked to assist surveillance. In their material to the investigator they said that the information they received was that F. D. was following surveillance vehicles.

When they stop the, the vehicle and they say, we stop it and we voice it, and they say somehow there is a discrepancy in the unit history because it doesn't show. When they use the word "we voiced it", they are speaking of radio communications. And as I said to you before, they will not show up on this. That's what you -- that's what officers, and I'm sure you heard that yourself, we voiced our stop.

They voiced two things, Your Honour. They voiced for the purposes of the communication centre that they had stopped a vehicle, which is standard for officer safety, and they voiced -- and the second thing is that they were stopping somebody with a gang association. That is why the two uniform officers -- or the two plain clothes officers went out of their way and showed up.

If it was just asking for back up, which is very, very common, as you know, Your Honour, uniform cars ask for

back up all the time, it will come in the form of another uniform car. These plain clothes officers came because they were being voiced to come because there was a stop of a, of a possible gang associate.

THE JUDGE: That is what I might guess --

MS. D.: Could I --

THE JUDGE: -- but I think, Mr. D. --

MS. D.: Sorry, Your Honour.

MR. D. : Sorry, Your Honour.

THE JUDGE: -- Mr. D. 's position is that on the face of the document as they see it, it is not clear, or if clear to them, it is a different interpretation than you're putting forward.

MR. MCKENNA: And it's perhaps because the commissioner's investigators don't write down verbatim every single word that -- of every investigation that they do. The, the information comes in from and it's explained to them, and then they sit the person down and they ask a series of questions and turn it into a series of notes like this.

You know, at the end of the day, I think it's got to be blatant, and it, it is -- that, that this was perhaps some sort of a random stop where they stumbled across somebody. You can't say that, Your Honour, with the greatest of respect, because of what I've just gone through, at the risk of repeating myself, they're being pre-empted, pulled off, given the information they know about S. They voice for a plain clothes car and the plain clothes car arrives, Your Honour. This was all done because of knowledge that they had coming into the, the call.

Now, there would be no plain clothes car there. There would be no pre-empting to --

THE JUDGE: Well, that's what --

MR. MCKENNA: -- to do a routine stop.

THE JUDGE: -- I suspect is likely the case.

MR. MCKENNA: Yes.

THE JUDGE: But, from the D(s) point of view, for whatever reason, they disagree.

MR. MCKENNA: Certainly. And, you know, I'd be the first one to admit and I'm sure you've seen that yourself, but anybody can poke any hole they want in any investigation. There is no --

THE JUDGE: Well, you know that --

MR. MCKENNA: -- such thing --

THE JUDGE: -- I know that.

MR. MCKENNA: Yes.

THE JUDGE: The D(s) don't know that, because --

MR. MCKENNA: It becomes a --

THE JUDGE: -- they're not like you and I, professionals who do this every day or, yeah, it's easy to pick holes. But --

MS. D.: Well --

THE JUDGE: -- but, you're going to have to do a lot more than pick a couple of holes, if this matter goes to a hearing.

MS. D.: Well, well --

THE JUDGE: Do you understand that?

MS. D.: Oh, I understand that. But, they will also have to supply where they've got all their information from, which I think that's what it should boil down to.

I mean, Mr. McKenna, I don't know, maybe you can help me, where the officers say, you say that they erred, it's erred. But they, they actually say, we have the vehicle, M. got on the radio, said we have the vehicle stopped, gave the licence number and number of occupants.

If you look on page 19, at 0350, they're saying they have a traffic stop, St. Anne, Sadler, at BMK 613 Manitoba, one occupant. So, they've actually called that in

to CPIC.

THE JUDGE: What, what --

MS. D.: At 3:50, CPIC comes --

THE JUDGE: What page?

MS. D.: Page 19.

MR. MCKENNA: At what time?

MS. D.: At 0350, 3:50 in the morning.

THE JUDGE: Well, Sadler is a long way from Salter, Selkirk area.

MR. MCKENNA: No, no, they --

MS. D.: No, I'm just saying that --

MR. D. : No, we're just trying to say that --

MS. D.: -- that's an example of --

MR. D. : That's an example --

MS. D.: -- them saying what they said they did, for my husband's stop.

THE JUDGE: All right, so they're in St. Vital --

MR. D. : Right, and --

MS. D.: Right, and then --

THE JUDGE: -- at one stage and north end --

MR. D. : -- at 4:53 --

THE JUDGE: -- the other, right.

MR. D. : -- at 4:53, the vehicle is stopped with two occupants, both occupants cooperative.

MR. MCKENNA: Your Honour, let me be clear on this. If you see it on this document, it is not because it was called in on a radio.

THE JUDGE: Yes.

MR. MCKENNA: It was typed in. These individuals, these officers told you that, or told you, told the investigator that they voiced it in. That's the radio. You won't see it on the unit history, Your Honour.

MS. D.: So, they typed it in at 0018 from the vehicle, is that what you're saying?

MR. MCKENNA: That's the only way it gets on there.

MS. D.: Okay, so what happened from 0004 to 0018, 14 minutes later? When did they identify Mr. D. as the driver of the vehicle? When they typed in his, his licence?

THE JUDGE: Well, he's not really here to give evidence, but he can help you out, in his opinion. He's actually counsel for --

MS. D.: Oh, I know.

THE JUDGE: -- for the Police Association. So, he can't give evidence here, but he's being helpful in trying to explain and interpret these sheets. So, when he says he's saying, he's pointing out what he believes to be the proper way to read these, which I didn't know, quite frankly. I've seen them before, but they've always just had a highlight and they were referred to. I have never gone through --

MS. D.: I've never gone through one either, Your Honour.

THE JUDGE: -- one of these --

MR. D. : I've never seen one before myself.

THE JUDGE: -- histories.

MS. D.: I'm just looking at what's further down in their history where they say they've done a traffic stop, they type in the licence number, number of occupants. They say they do it here, but it wasn't done. But, he -- I know Mr. McKenna is saying well, they voiced it over the radio. They didn't type it in like they did with these two on page 19.

THE JUDGE: All right, all right.

MR. D. : That's 14 minutes later they type it in.

MS. D.: But 14 minutes later they typed it in. So, something happened in that 14 minute span, where they

hadn't even identified F. D. --

MR. D. : Who I was.

MS. D.: -- who he was, and yet they knew they were dealing with an alleged Hells Angels Associate.

THE JUDGE: I've got it.

MS. D.: Okay.

THE JUDGE: No, no, I've got your point. The issue now is whether this is an error which is such that ought be overturned.

MS. D.: Another, another --

THE JUDGE: Now, you received the law on this. I don't expect you were able to read it when I say the law.

MR. D. : Yes, sir.

THE JUDGE: This particular volume.

MS. D.: I read the standards of review, the correctness --

THE JUDGE: All right. Can you turn to page 4 of 11, the first, starting from the beginning.

MS. D.: And what, what section is that in, Your Honour, is that in Section 1?

THE JUDGE: It's before the first tab.

MS. D.: Oh, okay. Page 4 of 11? Right. The --

THE JUDGE: I'll just point out that the law as suggested on the brief prepared here by Mr. Guenette or someone in his office, on his instructions, set up three standards. The first standard is a standard of correctness. The most exacting of review standards. It results in the provincial judge affording the least amount of deference to the commissioner's decision. When this standard is applied, the commissioner's decision can be overturned on the basis of a simple error. Second, now you've read this?

MR. D. : Yes.

THE JUDGE: It's a little complicated for a layman to read, quite frankly. The difference between

reasonableness simpliciter and patent unreasonableness is sort of explained there.

But you're suggesting, I presume, that I apply the correctness standard, that is the one that shows least deference to the commissioner's decision. In other words, which makes it most easy to overturn his decision.

MS. D.: Right.

THE JUDGE: That's what you'd like me to do, obviously.

MS. D.: Well, Your Honour --

THE JUDGE: Yes, just say yes.

MR. D. : We're not --

MS. D.: Yes.

THE JUDGE: Yes. All right.

Mr. McKenna, you'd like me to perhaps use one of the other standards.

MR. MCKENNA: Yes, Your Honour, we believe that reasonableness ought to be the guiding standard in these sorts of matters, or you would never need to have a commissioner or investigators for that matter. You could simply say, well, you know, if somebody says that they were wronged, we'll send it to a hearing and I don't think that that was ever the intent of government to set up this commissioner and hire investigators and go out and do that.

If I may, even on the correctness standard, Your Honour, when it says it can be overturned on the basis of a simple error. I don't think for one minute, and correct me if I'm wrong, that, that you would be saying that if you could find an error of any type in a file, that that means we have to have a hearing at the end of the day. Because we may as well bypass this process completely because there will always be an error on every file. Nobody is perfect. And every complaint will result in a hearing.

The question is, does the complaint go to the

fundamental nature or does the error go to the fundamental nature of what's at stake here. And, and when you examine the discrepancies and you say, and I agree with you when you say, well, what was the information that the officers had, and is, is -- there's a discrepancy here and does that mean that they didn't have the information until afterwards and that they stumbled upon it.

Well, you're faced with that on the one hand and you're faced with something else that the, the commissioner and his investigators had, on the other hand, and that is they were pre-empted off the call, they voiced it in, the plain clothes officers come, surveillance had asked for this stop to be made, and you have all of that. This was not a case that they walked into blindly. It was not. It was absolutely not.

And if, with the greatest of respect, I would suggest to you that the weight of the evidence, and you spoke about balancing the evidence, the weight of the evidence with all of which you know about calling in, the call, voicing it in, being pre-empted, being asked by surveillance to do this, all of that weight suggests that this was not a random call where they all of a sudden said, gee, we have F. D. .

The weight of the evidence is all there for you, Your Honour.

MS. D.: Your Honour, if I could just make another point. And I don't know if you will read it -- our submission or not, but there are some documents attached and I know the investigator from LERA who actually took the notes of the officer, Mr. Haslim (phonetic), was not the actual investigator, Mr. Churley was. And when I spoke to Mr. Haslim, he -- I attached his, his opinion, he was asked his opinion and he gave it. But, he admitted to me that he didn't even review the reports, the, the history of the

unit, that Mr. Hurley was actual investigator.

Mr. Hurley, in February of 2003, sends a message, an e-mail message to Mr. McKenna saying,

I have concluded my inquiries.
Would the two officers be willing
to sit down with the complainant
and discuss why this happened in an
attempt to address it on an
informal basis.

And then the next month, they've made the decision -- so at one point he was of the opinion that maybe it should be addressed informally.

Mr. Haslim is the person who actually took the notes and admitted to me that he didn't look at anything else but the officer's notes. He didn't even review the unit history.

THE JUDGE: Well, what does Mr. Haslim got to do with the commissioner's decision?

MS. D.: Well --

THE JUDGE: I mean, he may not have been, he may not have got his nose in it as deeply as he should. And you might be right.

MS. D.: I'm just saying, he's the one that took the officers' notes and if he's writing an opinion, I would, I would hope that he would review all of the information prior to making an opinion of such a serious nature that he didn't feel that there was sufficient evidence.

We're just, I guess, saying that we believe there is sufficient evidence, just to question in some respect, did they really know what they say they knew that day. We don't believe that they did. And we believe that if you look at the reports and read the officers' notes, that you

can put the two together and sort of come to that conclusion, that, you know, there were some, some errors in, in that.

THE JUDGE: Well, as I said earlier, if the officers were simply engaged in a routine spot check, their conduct might well be subject of criticism or discipline under the provisions of this Act. That is, based both on the information the officers provided and that of Mr. D. , this is not -- this was over and above a general routine spot check.

The issue then really is the information that they had in their possession at the time they ordered him down on the ground and cuffed him, which I suspect will be -- would be found to be justified if they had the information they now allege they had.

Given that this is the crux, it's not the officer's physical conduct so much -- no, I will retract that. I'm just thinking out loud.

MR. MCKENNA: Your Honour, I wonder if I could just assist you for one moment, because --

THE JUDGE: Yes.

MR. MCKENNA: -- there is something that bears pointing out in the, in the material at page 46. And I know we can pull things out of context and, and interpret in certain ways, but I think this is quite clear on page 46.

THE JUDGE: All right.

MR. MCKENNA: And you'll see at the top, it says,

I stepped out of the cruiser car and said, Stay in your car. I said this clearly but I wasn't shouting. He heard my instruction. I did this for my safety and my partner's. I knew we were dealing

with a known HA Associate whose son was just arrested for possessing weapons.

THE JUDGE: Yes, no, I --

MS. D.: I already read that part.

THE JUDGE: No, I think that the --

MR. D. : We read that.

THE JUDGE: -- position of the D(s) --

MR. MCKENNA: Yes.

THE JUDGE: -- however, is that this excuse, explanation, call it what you will, was used to subsequently justify their actions. And their position is, based on the communications to and from the car, they are not satisfied that the officers did have this information at the time of the stop. As I said, if they had the information I have every sympathy with the officers and I would expect that any of my brothers or sisters who adjudicated on this would understand that officer safety reasons dictate, as I said at the outset, extreme caution.

MR. MCKENNA: Maybe I don't understand something, Your Honour, then and it's a good chance to get some clarity. Are they saying that this was a purely random stop of --

THE JUDGE: That's what I understood their position to be.

MS. D.: What I'm saying, Mr. --

MR. MCKENNA: -- of an individual who had just gassed up his car and they decided, well, we'll stop this car who was just getting gas. Is that the position?

THE JUDGE: That's what I --

MS. D.: Mr. McKenna? Could I just make a comment?

THE JUDGE: Well, it's actually your husband's

position. He should probably, you can discuss this with him, but he should probably put the position forward. That's what I understood it to be.

MR. MCKENNA: Which begs the question why they would be pre-empted off --

THE JUDGE: Yes, yes, all right.

MR. MCKENNA: Okay.

MR. D. : Your Honour, again, when you look at the notes here, they typed in my plate, found out it was a truck --

THE JUDGE: Registered --

MR. D. : -- owned by F. D. . They never knew who was in it. And to have me on the ground, Your Honour, and search through my truck.

THE JUDGE: No, no, what --

MR. D. : You know, I mean --

THE JUDGE: -- what Mr. McKenna was saying is, it's your position that these police officers just randomly stopped you with no real reason, ordered you down almost at gun point, as you used the term, this --

MR. D. : Basically, and said to me, that they can stop anybody they want at any time, and what was I doing driving by the Public Safety Building tonight. And I wasn't circling any Public Safety Building.

THE JUDGE: All right. So, basically I --

MR. D. : I mean --

THE JUDGE: -- think that was Mr. McKenna's question. You weren't involved in doing what they said, it was just sort of a random, from your perspective, you were just --

MR. D. : Yes, and --

THE JUDGE: -- you were just picked out of the crown, so to speak.

MR. D. : And the way I was treated.

MS. D.: And Mr. McKenna just made note on page 46 where it says, I know we are dealing with a known Hells Angels Associate. Well --

THE JUDGE: Just a minute, ma'am.

MS. D.: Oh, I'm sorry.

THE JUDGE: Mr. McKenna just wants, was asking what your position is.

MS. D.: Okay.

THE JUDGE: That is, that this was basically a random stop and they're using the Hells Angels association after the fact to justify otherwise --

MR. D. : Yes, we believe --

THE JUDGE: -- unacceptable conduct.

MS. D.: Exactly.

MR. D. : That's what I believe.

THE JUDGE: Yes, that's fine. Mr. McKenna just wants to get on the record what your position was.

The issue really then isn't so much the officers' conduct. I think I have it from the D(s) that if they had had the information that they claimed they had, if they had been provided this with other police sources, then they could understand why they acted as they did, but --

MR. D. : They never said nothing to me.

THE JUDGE: -- but, failing that information in the officers' minds or possession at the time of the stop, they were overbearing and acted improperly. Is that --

MS. D.: Yes, Your Honour.

THE JUDGE: -- you're both nodding, ma'am, sir?

MS. D.: Right, they never --

MR. D. : Yes.

MS. D.: -- said to my husband, oh, we know you're an alleged Hells Angels Associate --

THE JUDGE: All right.

MS. D.: -- until these notes came out.

MR. D. : Or do you have any guns or dynamite or anything in your truck.

THE JUDGE: Now, this fact may not have been clear to the commissioner's investigators. Mr. McKenna has pointed out an interpretation which is consistent with their having this knowledge. The D(s) on the other hand, pointed to what they feel are irregularities in the cruiser history to suggest that they did not have that information.

This is a crucial, this is a crucial issue in my mind, Mr. McKenna, an error of any kind in failing to pursue further explanation which might satisfy the D(s), of course, but a member of the public, in my view, under the least deferential consideration ought be cleared up.

Now, that could be two ways. It could be remitted to the commissioner for a further investigation. I don't imagine, however, that that is going to satisfy the D(s) or anyone else who is suspicious of this because of course any further investigation of the commissioner would simply be a re-interview of the officers and perhaps other brother or sister officers who were in the plain clothes car. If it's going to be proposed that this matter was cooked up after the fact --

MR. MCKENNA: But, Your Honour --

THE JUDGE: -- that suspicion will still remain.

MR. MCKENNA: Yes. Your Honour, if, if I may, and this is something I don't think that you've taken into account yet, is that Mr. D. freely admits that these officers asked him what he was doing driving around the Public Safety Building. Now, how could they possibly ask that question if they had not been briefed beforehand. How could they possibly ask that question, Your Honour. They --

THE JUDGE: Mr. McKenna, what you're -- to some degree you're carrying coal to Newcastle.

MR. MCKENNA: But --

THE JUDGE: I am finding that there was an honest error here in not pursuing this explanation further and I'm ordering that there be a public hearing.

But, I'm telling you, Mr. and Mrs. D., as I look at this file, Mr. McKenna is right. There is no reason for these officers to have acted in the fashion they did, unless they had the information they alleged. Now, that's not a finding I'm making. I'm saying just based on my experience, based on that Mr. McKenna's submission, I think you're going to have a real high hurdle to convince one of my colleagues that they didn't have that.

Now, it depends of course on what evidence comes out, but I'm just sort of guesstimating that their evidence will be much the same as it was in their report and it will be backed up further by the undercover officers. Because in my experience, and I'll just, sir, there's really no reason for the police to have been involved with you at all, unless they were requested to stop you.

And you will see on this car history what Mr. McKenna pointed out seems to be they're having been dispatched to a call and that dispatch then being aborted as a result of an intervening factor. The intervening factor wasn't seeing a half ton truck with dark windows driving down the street. It was because they were countermanded from their original order.

Now, I'm just guessing. Now I'm not going to be talking to whatever one of my colleagues who will in due course hear this matter. I'm just telling you that I think you're chasing your tail on, on this one, and sort of going in circles. But, I think the evidence should be heard, so a final determination can be made and you'll have the opportunity of asking some of the questions that you're, you're putting to me, maybe getting answers that are satisfactory to you, maybe not. But, I think you are

entitled to explore your concerns in a public forum.

MS. D.: Thank you, Your Honour.

THE JUDGE: All right. Now, when you get to this public forum, you're not going to be able to tag team it.

MS. D.: I know.

THE JUDGE: You know --

MS. D.: I appreciate you for letting --

MR. D. : Thank you, Your Honour.

MS. D.: -- me help him. I know that it's not normal protocol, but.

THE JUDGE: Well, this, we've been dealing very informally with this. I'm not sitting, dotting all the I's and crossing all the T's. We've done it very, very informally. But, the next hearing is one that could prejudice the police officers' interests because the judge, if deciding that there was any wrong as alleged done, then makes recommendations which can have consequences to the police officers' career, whether by reprimand, fines or worse.

So, you will understand that the judge then presiding is going to stick very close, very close to the book. Because real issues of concern to these officers are going to be -- Mr. McKenna will be playing a far more active role, I have every confidence, in those proceedings. He's here something of amicus curiae, a friend of the court, and he has offered helpful information. But he will be examining, cross-examining any witnesses that you see fit to call, et cetera. So, it will be a much more formal proceeding.

I don't know if you intend to retain --

MS. D.: We should get legal counsel for that one.

THE JUDGE: -- counsel or not. That's completely up to you.

MS. D.: We will, I'm sure.

THE JUDGE: All right. Who is going to draw the order, gentlemen? You're going to fight over it?

MR. MCKENNA: No, that's typically comes out of your office, Your Honour. It's different --

THE JUDGE: Well, it ought not, it ought not.

MR. MCKENNA: Yeah.

THE JUDGE: Because I've never appeared in a court where I had the judge ever, and that's from the top to the bottom where the judge drew the order. It's Mr. J., Mr. N., you will draw the order, yes, My Lord, yes, sir.

MR. MCKENNA: I suppose the reason is that it's not a court, it's an administrative tribunal.

THE JUDGE: Yes, we've got precedents in the office, so, it will be just very brief, style of cause, on appearing, et cetera, et cetera.

MS. D.: Does the date actually get set now?

THE JUDGE: No.

MS. D.: No?

THE JUDGE: I have no idea.

MR. D. : Okay.

THE JUDGE: There's a lady in my office that sort of by default taken charge of this. Her name is Ms. Baron, B-A-R-O-N. I don't have the number, but it can be reached at Provincial Judges Chambers. But, she will be in contact with you. There will be --

MS. D.: Oh, okay.

THE JUDGE: But, they have to find a courtroom, find a time. If you have counsel, she'll want to know that, because there's no sense setting a day and then having you retain counsel and counsel is otherwise committed. And similarly, these gentlemen's calendars will need be consulted. We'll set a hearing date, probably in this room, this is where most of them have been in my experience, but not necessarily this room. But, Ms. Baron will inform you

and keep in contact with you.

MS. D.: Okay, thank you very much, Your Honour.

THE JUDGE: All right.

THE CLERK: Order, all rise --

THE JUDGE: And one other just word of friendly
advice --

MS. D.: My son --

THE JUDGE: Your son can come if he wants. He
doesn't -- his presence and associations probably don't
assist your position, especially if as I suspected, past
tense, he came in with somebody else that's, you know.

MS. D.: Thank you, Your Honour.

THE CLERK: Order, court is closed.

(PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, **SUE MYMKO**, hereby certify that the foregoing
pages of printed matter, numbered 1 to 60, are a true and
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