

IN THE MATTER OF:

The Law Enforcement Review Act
Complaint No. 6211

AND IN THE MATTER OF:

A hearing pursuant to s. 17 of the Law
Enforcement Review Act R.S.M. 1987, c175

BETWEEN:

B. J. E. L.

) Complainant
) Self represented

-and-

CONSTABLE G. K. R. #XX

) Respondent
) Richard Wolson
)
)
) Reasons for Decision
) delivered on the 1st,
) day of December, 2006

These reasons are subject to a ban on publication of the respondent's names pursuant to Section 25 of the Law Enforcement Review Act.

REASONS FOR DECISION

Combs, J.

[1] On June 14, 2005, the Law Enforcement Review Commission referred this matter to a Provincial Judge for a hearing of the merits of a complaint by the Complainant, B.J. E. L. against the Respondent Constable.

[2] The Complainant alleges that the Respondent abused his authority by failing to allow the Complainant to retain and instruct counsel without delay, contrary to Section 29(a) of the Law Enforcement Review Act.

The Evidence

[3] The Complainant was the only witness in these proceedings. She stated that she and her mother were guests at the Canadian Inn Travel Lodge hotel in the City of Brandon overnight from April 19 to April 20, 2003. During the evening of April 19 and early morning hours the Complainant had a considerable amount

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

of alcohol to drink and described herself as “intoxicated”. She decided at about 3:00 a.m. to go outside and have a cigarette. While outside she became confused or intimidated by a number of people leaving a bar which was located next to the hotel building.

[4] The Complainant decided that she needed the assistance of the police to get back into her hotel, as she felt the pedestrians walking by were blocking the entrance. She observed two police cars driving by and knocked on the window of both. The Complainant alleges that the police either ignored her or refused to give her assistance. She eventually opened the back door of the police car operated by the Respondent officer and sat in the back seat. She again requested assistance from the officer in getting back into her hotel.

[5] The Respondent officer asked her to leave the police car and she refused. He again asked her to leave the police car and indicated that if she failed to do so, she would be removed and arrested. Her response was to tell the officer to “fuck off”. The Respondent officer and another Brandon Police Services officer removed the Complainant from the back seat of the police car, handcuffed her and put her back into the police car. Apparently, in putting her back into the car, the Complainant’s shoulder banged against the side of the police car and opened up a cut from recent surgery.

[6] The Complainant was taken to the Brandon Correctional Institution where she was told by the Respondent officer that she had the right to call a lawyer. The Complainant insisted that she did not want to call a lawyer, but only to call her mother to let her know where she was. The Respondent officer, along with the other peace officers present, refused this request and the Respondent officer once again said that she could call a lawyer and he would assist her in making the call. The Complainant, frustrated at not being able to call her mother, again told the Respondent officer to “fuck off”.

[7] The police officers and corrections officials then noticed that the Complainant was bleeding so she was taken to Brandon General Hospital where she received stitches to her cut. The Complainant alleges that she was handcuffed and held down on her stomach while the stitching was done. She testified that she asked the Doctor if she could use the phone and the Doctor told her that this was a decision to be made by the police.

[8] The Complainant was taken back to the Correctional Institution and again asked to use the phone. The Respondent officer once again told her that she had the right to phone a lawyer but she declined the opportunity, insisting that she only wanted to call her mother. This request was refused.

[9] The Complainant was lodged overnight and released the next morning. She eventually plead guilty to a charge under the Liquor Control Act and received a reprimand.

Decision

[10] The Complainant in her own evidence acknowledges that she was given at least two opportunities to contact a lawyer, once when she was initially lodged at Brandon Correctional Institution and once again when she returned from the hospital. There is no evidence that this opportunity was not given in a timely fashion and was offered to the Complainant shortly after she arrived at the Brandon Correctional Institution. The Complainant's real concern is that she was not allowed to call her mother and believed that she was entitled to her one phone call. While on the face of it, it may have seemed reasonable to allow the Complainant to call her mother, no such right exists, and the officer was within his discretion to decline this request. The Complainant was given a reasonable opportunity to contact a lawyer and refused to do so. Her complaint must therefore be dismissed.

[11] It is ordered that the ban on publication of the Respondent's name shall still be in full force and effect.

Combs, J.