

IN THE MATTER OF:

Law Enforcement Review Act
Complaint No. 5216

BETWEEN:

D. G. ,

Complainant,

- and -

CONSTABLE C. K. #

Respondent.

TRANSCRIPT OF PROCEEDINGS had and taken before The Honourable Judge Kopstein, held at The Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 11th day of February, 2003.

APPEARANCES:

MR. D. G. , in person.

MR. D. GUÉNETTE, for the Commissioner.

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

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

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1 FEBRUARY 11, 2003

2

3 THE COURT: Yes, this is a disposition hearing, as
4 I understand it, counsel?

5 MR. GUÉNETTE: That's right, Your Honour. Perhaps
6 I'll introduce myself. Denis Guénette, on behalf of the
7 commissioner.

8 THE COURT: Yes.

9 MR. GUÉNETTE: The commissioner was not actually
10 present, did not have a presence as a party or anything at
11 the hearing on this --

12 THE COURT: No.

13 MR. GUÉNETTE: -- on these merits, but we do
14 appear this afternoon as a facilitator. We recognise
15 that --

16 THE COURT: Thank you.

17 MR. GUÉNETTE: -- Mr. G is here on his own.

18 THE COURT: Yes.

19 MR. GUÉNETTE: The police officer is not here and
20 does not have counsel here.

21 THE COURT: Right.

22 MR. GUÉNETTE: And in the event that we could be
23 of assistance to Your Honour, we'll be here to ask questions
24 about how processes can be followed or anything to do with
25 respect to the administration of the Act. We will not be
26 making submissions as to what we would consider to be a
27 penalty to assess.

28 THE COURT: All right. I should ask perhaps,
29 Mr. , if he has any submission to make as to what the
30 disposition of the matter should be insofar as penalty is
31 concerned. The Act gives me certain powers, either to
32 follow the recommendation of the police chief -- and I don't
33 have any, as far as I know. Do you, do you know of any --
34 do either of you know of any recommendations by the police

1 chief?

2 MR. MCKENNA: Your Honour, my name is Paul
3 McKenna, for the --

4 THE COURT: Yes.

5 MR. MCKENNA: -- record.

6 THE COURT: Yes, I know.

7 MR. MCKENNA: I am here for the Winnipeg Police
8 Association, Your Honour.

9 THE COURT: Yes.

10 MR. MCKENNA: I can answer that question, I wanted
11 to speak on a preliminary matter --

12 THE COURT: Yes.

13 MR. MCKENNA: -- but there is no recommendation
14 that I know of coming from the Chief of Police in this
15 regard.

16 THE COURT: All right. What was the other matter
17 you wanted to speak on?

18 MR. MCKENNA: Your Honour, there was a comment
19 made in, in your decision and the Winnipeg Police
20 Association has asked me to attend and clarify --

21 THE COURT: Yes.

22 MR. MCKENNA: -- for the record, particularly
23 since you indicated that you felt that some of the -- or the
24 position that was being taken was puzzling.

25 THE COURT: Yes.

26 MR. MCKENNA: And with your permission, I'd like
27 to just clarify something for the record.

28 THE COURT: Please do.

29 MR. MCKENNA: Thank you.

30 Your Honour, I refer in particular to page 3 of
31 your decision and a note that Ms. , the respondent
32 officer in this particular case, had sent an email to the
33 judicial assistant -- I think it's probably to Marilyn
34 Baron --

1 THE COURT: Yes.

2 MR. MCKENNA: -- that she was no longer employed
3 by Winnipeg Police Service, that as a result of that,
4 neither her travel to Winnipeg or her legal representation
5 would be funded. I have never seen that email, Your Honour,
6 and it is not, in fact, the case that legal representation
7 is not provided or funded for officers who are no longer
8 with the service. That is not the case. In fact, last week
9 I was in front of Justice Clearwater representing a police
10 officer that had been retired for several months, on a
11 judicial review of a LERA decision.

12 THE COURT: Is it the case then that she simply
13 didn't respond to counsel's -- Police, Police Association
14 counsel's communications to her?

15 MR. MCKENNA: What, what happened, Your Honour, is
16 that we were prepared -- we had instructions from the
17 Winnipeg Police Association, as we do in every matter, to
18 represent Ms. and we were prepared to do so. And,
19 in fact, I was the one that made the arrangements which you
20 noticed -- you made note of in your decision about moving it
21 from the winter to the summer, which was done specifically
22 because of her stated intention to attend for a family
23 matter and I asked Ms. Baron if it would be possible to
24 adjourn it to that very week so that she would be here
25 anyway. She advised that she had to speak to Mr.
26 first and then she got back to me and said that would be
27 fine and arrangements were made.

28 We were prepared to meet with her and prepare the
29 matter and then attend before Your Honour and defend
30 Ms. , and she did not come to Winnipeg. It is --
31 it has never been the Police Association's role to fly
32 former employees of the City of Winnipeg into Winnipeg. It
33 has always been the Winnipeg Police Service. In this
34 particular case, they refused to do so. The Winnipeg Police

1 Association, I can tell you, since, since I took over LERA
2 matters in 1988, has absolutely never said no to a police
3 officer in representing and I can also tell you that the
4 Winnipeg Police Service has never refused to pay one of my
5 bills. We did not -- my client did not abandon Constable
6 at all.

7 THE COURT: So it was a matter of the cost of
8 travelling.

9 MR. MCKENNA: It was, it was that she did not want
10 to come in for, for that -- I'm assuming it's because of the
11 cost. The City of Winnipeg was not going to pay it.

12 THE COURT: Um-hum.

13 MR. MCKENNA: Had she been here, we, Your Honour,
14 would have represented her as we were instructed.

15 THE COURT: All right. I'm glad you cleared that
16 up for the record. If you would like me to clarify it in
17 writing, I can do so.

18 MR. MCKENNA: That would be very helpful, Your
19 Honour, because, as you know, the Police Association has
20 some 1300 members and they hear stories second and
21 third-hand and the story changes as you go along, and
22 somewhere down the road someone says, What is this about our
23 association abandoning our members? And it can be quite
24 harmful if people don't understand the true circumstances.

25 THE COURT: Well, I apologise to the Police
26 Association if I have started a rumour in that way that has
27 no foundation. So that the position as I understand it is
28 that the Winnipeg Police Association would have represented
29 her had she been here and been prepared to proceed, but
30 that, as a matter of policy, the association nor ... Let's
31 see, the association and who else?

32 MR. MCKENNA: The Winnipeg Police Service.

33 THE COURT: Winnipeg Police Service have not paid
34 for and will not pay for transportation. So that was the

1 hang-up.

2 MR. MCKENNA: That's correct.

3 THE COURT: Okay. Thank you very much.

4 MR. MCKENNA: Thank you, Your Honour. With regard
5 to this penalty hearing, I still act for the Winnipeg Police
6 Association as a general role. If my assistance is required
7 in here, given that I am the one that has been through all
8 of these since 1988 and probably no other counsel in, in the
9 province has, and so with that in mind, if you'd like me to
10 remain and ...

11 THE COURT: Just for a moment, yes.

12 MR. MCKENNA: Yes.

13 THE COURT: I'm going to hear from Mr. -

14 MR. MCKENNA: Yes.

15 THE COURT: -- as to whether he has any specific
16 submission as to what the sentence should be. Then I may
17 call upon you.

18 MR. MCKENNA: Thank you, Your Honour. I do have
19 some precedent for you, and if you call upon me, I'd be
20 happy to --

21 THE COURT: Thank you.

22 MR. MCKENNA: -- get that on the record. Thank
23 you, Your Honour.

24 THE COURT: Yes. Mr. Guénette?

25 MR. GUÉNETTE: I can add one last thing before we
26 proceed, Your Honour.

27 THE COURT: Yes.

28 MR. GUÉNETTE: A subpoena has been issued by the
29 commissioner's office to Staff Sergeant who's the head
30 of the Professional Standards Unit, because under Section
31 28(1) Your Honour is supposed to take into account the
32 service record under the Act --

33 THE COURT: Yes.

34 MR. GUÉNETTE: -- of the police officer, so we're

1 prepared to deal with that at any time that you want, Your
2 Honour --

3 THE COURT: Yes, do you --

4 MR. GUÉNETTE: -- if you want to do it now or if
5 you would like to wait.

6 THE COURT: -- propose that we call him as a
7 witness or can you summarise for me what the record is, if
8 there is any record?

9 MR. MCKENNA: Your Honour, if I may, what has
10 happened in the past in every case is that the Court -- I
11 shouldn't say "Court" because we are not really in a court,
12 but yourself, as judge sitting persona designata, calls the
13 individual to the stand and questions the individual and
14 asks the individual to enter in as an exhibit the service
15 record. The last time that was done was in front of Judge
16 Miller with a Constable --

17 THE COURT: It sounds like a, sounds like a proper
18 procedure.

19 MR. GUÉNETTE: Yes, thank you.

20 THE COURT: Could I ask the, the police officer to
21 come forward?

22 THE WITNESS: Good afternoon, Your Honour.

23 THE COURT: Good afternoon. Your name, sir?

24 THE WITNESS: It's Staff Sergeant or
25

26 THE COURT: Would you take the Bible, please?
27

28 ;, being first duly
29 sworn, testified as follows:
30

31 THE CLERK: Thank you.
32

33 EXAMINATION BY THE COURT:

34 Q Yes, Staff Sergeant, could you advise me or place

1 before the Court the service record of Ms. ... What was her
2 name? Sorry ...

3 A Constable

4 Q Yes, Constable

5 A Yes, Your Honour. For Constable (
6 badge number , had a
7 Winnipeg Police Service record composed or compiled and it's
8 very brief and I can offer it to you at this point. It only
9 has two entries, one from September 30th of 1991 where she
10 commenced duty with the Winnipeg Police Department as a
11 probationary constable and attended recruit class number
12 118, and the second entry is that of her being -- offering
13 her resignation and that was on the -- December 12th of
14 2000.

15 Q Thank you. So there's nothing negative in the
16 record.

17 A No, sir, there is no -- there's nothing offered.

18 THE COURT: Thank you. You can file that as
19 exhibit on sentence, Exhibit 1, S-1.

20 Thank you. Do you wish to ask any questions, any
21 of you?

22 MR. MCKENNA: No, Your Honour.

23 THE COURT: Thank you. You may be excused.

24 THE WITNESS: Thank you, Your Honour.

25 THE CLERK: S-1 is filed.

26

27 EXHIBIT S-1: WINNIPEG POLICE
28 SERVICE RECORD FOR CONSTABLE

29

30

31 (WITNESS EXCUSED)

32

33 THE COURT: Mr. , did you wish to make any
34 submission as to what you think sentence should be?

1 MR. G Your Honour, I'm not a judge. I
2 don't know -- I mean the reason I made the complaint and I
3 phoned -- and I proceeded that far is simply because I think
4 she was completely abusive and there was no call for it.

5 THE COURT: All right.

6 MR. G : She embarrassed me, you know, and it
7 shouldn't be done. Now, as far as punishment, I don't know.

8 THE COURT: Thank you.

9 MR. G To me, if --

10 THE COURT: I understand.

11 MR. G Okay.

12 THE COURT: The options open to me -- and I don't
13 have the Act in front of me, but if I recall correctly, I
14 can follow the recommendation of the police chief or I can
15 impose such other penalty as I think is appropriate. I can
16 tell you, Mr. McKenna, that the incident itself, while
17 annoying and obviously troublesome to Mr. was not
18 in the category of a major crime. I think she deserves to
19 be punished and reminded that her uniform alone doesn't
20 entitle her to respect, it's her conduct, and that conduct
21 did not engender any respect. My inclination, unless you
22 persuade me to the contrary, is to impose a modest fine.

23 MR. MCKENNA: Your Honour, thank you for allowing
24 me to speak on that matter. There is no, there is no --

25 THE COURT: Provision?

26 MR. MCKENNA: -- provision for a fine in, in the
27 legislation. It is all with relation to days of work. And
28 so, for instance, if somebody works one day -- and, and the
29 ruling is under (e) of Section 30 that there's forfeiture of
30 pay up to a maximum of ten days pay. So if you say
31 forfeiture of one day pay, what that means is the officer
32 has to go in to work, for instance, on their scheduled day,
33 Monday morning, and --

34 THE COURT: I understand that. But if she's no

1 longer working --

2 MR. MCKENNA: Yes.

3 THE COURT: -- here, that -- unless they sue her
4 for back pay, that seems to be an impractical punishment at
5 this point.

6 MR. MCKENNA: Your Honour, I have always taken the
7 position that there ought not to be hearings once an officer
8 leaves, and I can appreciate in Brandon there was a decision
9 that came out to the contrary. I can tell you in the very
10 early days when I was doing this work and someone would
11 leave or resign and the commissioner would say, Well, what
12 do we do about this?, and I would say, Well, it's
13 meaningless to go ahead because the penalties are not
14 enforceable.

15 You are limited because of your position. In
16 administrative law this is known as a position of -- where
17 you're limited to the jurisdiction granted to you under the
18 statute. You don't have the wide range you would have in
19 the Provincial Court and, as a result, you don't have the
20 jurisdiction to impose a fine. You're limited to all of
21 these items which are work related and that's why I've never
22 understood why these hearings, with the greatest of respect,
23 why they go ahead because they -- that is, at the end of the
24 day, all you can do is impose a work related penalty, which
25 these penalties all are.

26 If I may, Your Honour, provide a -- the only other
27 precedent we have in this particular case is a Constable
28 who was given an admonition by Judge Miller not
29 too long ago and I can just get the date for you, Your
30 Honour. The date of that was January 21 of 2002 and the --
31 bear with me for just one moment, Your Honour. The charge
32 was discourteous or uncivil, and he had a 25-year record
33 that was clean and he was given an admonition as a result of
34 that.

1 THE COURT: I wonder if I could trouble you to let
2 me see the section dealing with penalties --

3 MR. MCKENNA: Yes.

4 THE COURT: -- so I can look over it myself.

5 Yes, do you wish to say anything further,
6 Mr. McKenna, or do you, do you have a submission as to what
7 your recommendation would be?

8 MR. MCKENNA: Your Honour, I think in the, in the
9 particular circumstances, given that her record is clean and
10 that there is nothing, Your Honour, to suggest that she
11 would not -- that there was a need for an excessive penalty
12 or that a penalty that you impose would not impart on her
13 the importance -- I think her, her reason for non-attendance
14 of the City not paying the bill and the fact that she now
15 works at for the , I think
16 is a, is a very understandable reason. I don't think that
17 she is showing any disrespect for Your Honour or these
18 proceedings and I don't think that there is any indication
19 from, from the record that was presented to you that this is
20 an individual that needs to be taught a lesson over and
21 above the sort of thing that you could envisage for a
22 first-time offence, and this is really a first-time offence,
23 Your Honour.

24 My recommendation to you would be an admonition as
25 Judge Miller did with Constable in
26 January of 2002. It would be in keeping with that as a
27 precedent.

28 THE COURT: Thank you.

29 I admonish the accused -- or the respondent,
30 that her conduct was discourteous and
31 uncivil and therefore a disciplinary default. I caution her
32 that that conduct should not be repeated in future conduct
33 as a police officer. That is the admonition.

34 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, **VELMA DOERKSEN**, hereby certify that the foregoing pages of printed matter, numbered 1 to 10, 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, Alice Koben, and have been transcribed by me to the best of my skill, ability and understanding.

Velma Doerksen

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