

IN THE MATTER OF:

**Law Enforcement Review Act
Complaint No. 6313**

BETWEEN:

V.S.,

Complainant,

- and -

**CONSTABLE P. D.,
CONSTABLE C.B.,
CONSTABLE M.L.,
and CONSTABLE R.H.,**

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 6th day of June, 2005.

APPEARANCES:

MR. S. BOYD, for the Commissioner.

MR. J. WEINSTEIN, for the Winnipeg Police Association.

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

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3 THE CLERK: Judge Newcombe presiding. Please be
4 seated.

5 THE JUDGE: Yes, gentlemen. Mr. Weinstein.

6 MR. WEINSTEIN: Good morning, Your Honour. Just
7 -- maybe just some housekeeping matters.

8 Josh Weinstein here on behalf of the respondent
9 officers and Sean Boyd is here on behalf on the
10 commissioner. And just also present I can indicate is --
11 from the commissioner's office is Max Churley.

12 THE JUDGE: Mr. Churley.

13 MR. WEINSTEIN: And I, I have not -- I don't know
14 what the complaint looks like but I've asked just people
15 what they -- if they needed assistance, if they were here
16 for this matter. They're not. So I don't know where Miss
17 S. is.

18 THE JUDGE: Would you be Miss S.?

19 Just checking.

20 No. The lady in the courtroom -- if you don't --
21 aren't offended by the word lady -- and I certainly don't
22 wish to exclude Madam Clerk -- but the only person I don't
23 know would be yourself and Mr. Boyd.

24 You, you'd made application in the documents filed
25 to permit commissioners be represented and that's certainly
26 granted --

27 MR. WEINSTEIN: Thank you --

28 THE JUDGE: -- as a matter -- almost as a
29 matter --

30 MR. WEINSTEIN: -- Your Honour.

31 THE JUDGE: -- of course.

32 Well, what do you, what do you suggest we do --

33 MR. BOYD: Well, I --

34 THE JUDGE: -- gentlemen, in terms of time?

35 MR. BOYD: Mr. Curley does recognize the

1 complainant so he might oblige us by stepping out in the
2 hallway to check if she's around there.

3 THE JUDGE: If you would, please.

4 I kept thinking -- I was wanting to call
5 Mr. Churley officer but he's no longer with the RCMP of
6 course.

7 MR. BOYD: Mr. Churley's indicated he doesn't --

8 THE JUDGE: Yes.

9 MR. BOYD: -- see her.

10 THE JUDGE: Well --

11 MR. WEINSTEIN: Your Honour, I, I leave it -- I --

12 THE JUDGE: Let's give her another 15 minutes.

13 MR. WEINSTEIN: Absolutely.

14 THE JUDGE: Five after ten.

15 MR. WEINSTEIN: That's fine.

16 THE JUDGE: Some people -- and I don't know of
17 course how familiar Miss S. is with the, with the court
18 process but many courts -- civil and criminal -- begin at --
19 proceedings at ten o'clock. So --

20 MR. WEINSTEIN: That's fine, Your Honour.

21 THE JUDGE: She's been notified apparently of, of
22 the time, place and date. So I think if we give her just
23 until after the ten o'clock --

24 MR. WEINSTEIN: That's fine.

25 THE JUDGE: -- time. I, I might even consider
26 giving her more time.

27 But on my first reading of the information that
28 Mr. Churley and the commissioner have gathered in this, it
29 wouldn't be surprising if after her initial pique at
30 receiving the commissioner's letter, she realized that she
31 stands alone against the, the officers and against the three
32 witnesses that viewed the -- at least the initial part of
33 this incident.

34 Doesn't seem to have a great deal of merit on what
35 I have read. That's subject, of course, to her pointing out

1 factors that I've overlooked or haven't given due weight.

2 But let's just say -- let's say ten after.

3 MR. WEINSTEIN: That's fine, Your Honour.

4 THE JUDGE: We'll give her, we'll give her 20
5 minutes if that's all right with you, gentlemen?

6 MR. WEINSTEIN: It is.

7 MR. BOYD: Yes, Your Honour.

8 THE JUDGE: And I can see myself back.

9 Madam Clerk, you've got a key. If you'd come for
10 me about ten after --

11 THE CLERK: All right. All rise. Court will take
12 a recess.

13

14 (BRIEF RECESS)

15

16 THE CLERK: Court is now open.

17 THE JUDGE: You might be V. S.?

18 MS. S.: I am.

19 THE JUDGE: All right.

20 As you understand it, this an -- your appeal from
21 a order of the commissioner dismissing your complaint
22 against Constables D., B., L. and H.

23 Mr. Weinstein is here on behalf of the officers
24 and Mr. Boyd, who is next to you, is here on behalf of the
25 commissioner who's been granted standing to make
26 representations.

27 As you understand very likely, as a result of
28 correspondence sent you by the commissioner, in this appeal
29 the onus is on you to convince me that the commissioner was
30 mistaken. Now, I don't --

31 MS. S.: Um-hum.

32 THE COURT: -- expect you're legally trained so

1 it's a difficult --

2 MS. S.: What do you mean by that, sir? Legally
3 trained.

4 THE JUDGE: Are you a lawyer?

5 MS. S.: No.

6 THE JUDGE: No. Just --

7 MS. S.: Are you a judge?

8 THE JUDGE: Ma'am, yes.

9 MS. S.: Okay.

10 THE JUDGE: Why, why do you think I am sitting
11 here with this funny outfit on?

12 Saying you're not legally trained so it's more
13 difficult for you to put your case forward than it might
14 otherwise be. So I'll try to help you if you stumble in
15 certain areas but I have to try to be in the middle on, on,
16 on this. So I can't put your case forward for you. Do you
17 understand?

18 MS. S.: So far.

19 THE JUDGE: Right.

20 Now, why is it, ma'am, that you believe
21 Mr. Commissioner was mistaken in his letter to you and if I
22 recall he set out on a letter of November 15th last the
23 result of the investigation that he caused to be made. You
24 received that letter I'm, I'm sure, ma'am?

25 MS. S.: I did.

26 THE JUDGE: And what -- where is it? In what
27 portion of that letter, for instance, do you say that
28 Mr. Commissioner erred and made a mistake in not proceeding
29 further with your complaint?

30 MS. S.: Well, well, because everything was untrue
31 and he said -- I just want to get to the bottom line and
32 you're, you're going to make this all so complicated for me
33 that --

34 THE JUDGE: Not at all, ma'am.

1 MS. S.: -- somehow you're going to, you know, the
2 case is going to be dropped. I can see it already.

3 THE JUDGE: Well, ma'am, if that's your opinion,
4 so be it. I have no idea why you say we're making this
5 complicated. I'm simply saying you got the letter. I'm --
6 and I'm inviting your comment on it.

7 Yes. Do you have the letter with you, ma'am?

8 MS. S.: No. I don't.

9 THE JUDGE: Well, I'll give you -- pass you down
10 my copy of it.

11 First, just for the record, it's a six page
12 document over Mr. Wright's (phonetic) signature, forward to
13 Ms. S. I believe and apparently received.

14 He sets out the details of your complaint.

15 And then, in particular, he, he sets out the
16 evidence -- at least the statements --

17 MS. S.: Um-hum.

18 THE JUDGE: -- given to, among other people,
19 Mr. Churley, who's a experienced investigator --

20 MS. S.: Yes.

21 THE JUDGE: -- who went to the house in question
22 and spoke to three people that were there with you on the
23 day in question.

24 MS. S.: Um-hum.

25 THE JUDGE: Now, there's nothing in -- aside from
26 what the police officers say -- let's just forget about the
27 police officers for the, for the time being.

28 It's not uncommon for people that do something
29 wrong to colour their evidence to make themselves look good.
30 So let's just forget about them for the time being and look
31 at your friends.

32 MS. S.: In here.

33 THE JUDGE: These are -- yes.

34 MS. S.: They're my enemies right now.

1 THE JUDGE: Well, no. But they were your friends.
2 You were partying with them, socializing with them. You
3 chose --

4 MS. S.: It's --

5 THE JUDGE: -- you chose to spend the afternoon
6 and the early evening with them.

7 MS. S.: Yes. I did.

8 THE JUDGE: And these people, I would presume,
9 would have an objective view and reading between the lines,
10 I think Commissioner Wright placed a, a good deal of weight
11 on their evidence, albeit they weren't all perhaps as sober
12 as one would hope, but they did describe saying that you
13 were asked to leave, that you wouldn't leave the premises
14 and that the police did nothing that they observed which in
15 any way unprofessional or overly rough.

16 These -- you've got to -- I -- you, you have to
17 sort of show me where you think the commissioner went wrong
18 in coming to that decision, ma'am.

19 MS. S.: Well, my family -- that part of the
20 family -- they -- I shouldn't bad mouth them but they're all
21 known as drinkers. And, of course, they're going to lie.

22 THE JUDGE: Well, why you say of course? Why
23 don't they lie about the police and, and --

24 MS. S.: Oh. They probably did.

25 THE JUDGE: No. But I mean why don't they lie and
26 say, Oh. The police are bad people and they hurt Miss S.
27 and they were abusive to her and pushed her around and hurt
28 her?

29 MS. S.: Because their son stole \$75 off me and
30 she was trying to protect him. I'm pretty sure of that.
31 And other things too. Because when I went to leave, I went
32 to the refrigerator to collect my beer and I said, Well, I'm
33 taking my beer with me. And E. pushed me. I said, Don't
34 push me, and that started it.

1 And they held me hostage there in the kitchen and,
2 and the living-room. And I found a chance to sneak to the
3 phone and I dialled 911.

4 THE JUDGE: And the police came.

5 MS. S.: Yes. They came like in a matter of -- I
6 can't believe. That's the fastest I've seen, seen police
7 come to that address. But there's always something going on
8 there.

9 THE JUDGE: Well, the police got there.

10 MS. S.: Yes. They did.

11 THE JUDGE: And the lady of the house
12 apparently --

13 MS. S.: That's my Aunt E. I don't call her Aunt
14 E. anymore. Call her Ms. S..

15 THE JUDGE: Well, I won't call her that because
16 you're Ms. S. as, as well.

17 But she told the police that you'd been causing
18 trouble. Whether she was true or not -- whether that was
19 true or not, that's what she told the police.

20 MS. S.: Yes.

21 THE JUDGE: And she, she might have been mean to
22 you and she might have been exaggerating about things. I, I
23 don't know. But I do read there that she said --

24 MS. S.: Oh.

25 THE JUDGE: -- you weren't welcome here.

26 MS. S.: Yes. I've read this.

27 THE JUDGE: That, that you'd been fighting with
28 people in the house. You'd been arguing and fighting with a
29 neighbour and they -- and you wouldn't leave. You lay down
30 on the floor and, and wouldn't move.

31 MS. S.: That's very untrue.

32 THE JUDGE: Well, the police apparently -- that's
33 what the investigator has --

34 MS. S.: That's --

1 THE JUDGE: -- determined.

2 MS. S.: -- when somebody pushed me to the floor.
3 Of course.

4 THE JUDGE: Well, then you wouldn't get up.

5 MS. S.: Well, how can I get up when people are
6 over top of me and saying, Are you going to get up, you
7 know, point your finger at your face, that you're going to,
8 going to kill you. That's very, you know --

9 THE JUDGE: The police say that?

10 MS. S.: You feel -- no. The -- my --

11 THE JUDGE: Your family.

12 MS. S.: -- relatives -- so-called relatives.

13 THE JUDGE: But the police had to carry you out to
14 the cruiser car.

15 MS. S.: Okay. Let me explain again, please.

16 The way it happened -- the police came in and they
17 came in, they came in raging mad, you know. And they're all
18 screaming, It's her, it's her, it's her, it's -- and I had
19 no chance to speak. None whatsoever. And this officer's
20 pushing me and, you know, I'm telling him to get your hands
21 of me. You know, I says, I'm not that drunk.

22 THE JUDGE: Well, you, you said you -- yeah. You
23 said you had about a dozen beer.

24 MS. S.: Yes.

25 THE JUDGE: Well, between mid --

26 MS. S.: But I --

27 THE JUDGE: -- afternoon or early two o'clock or
28 so when you started and seven o'clock when the police were
29 called or seven fifteen, 12, 12 beer is in some circles
30 perhaps merely a, a --

31 MS. S.: Well, that was a lot of beer. Yes.

32 THE JUDGE: -- a social splash. But --

33 MS. S.: That's --

34 THE JUDGE: -- in other circles --

1 MS. S.: Let's say --

2 THE JUDGE: -- that's drunk.

3 MS. S.: -- you're drunk. I agree with you. But
4 I do not agree with you that -- the way I was treated and
5 dragged out of the house.

6 THE JUDGE: Your aunt is the home owner. She --

7 MS. S.: My aunt --

8 THE JUDGE: -- reported -- she, she --

9 MS. S.: -- is a lousy --

10 THE JUDGE: She, she --

11 MS. S.: -- drunk.

12 THE JUDGE: -- or the rentee or the, the lessee of
13 the premises. I don't know if she owns the home or rents
14 it. But --

15 MS. S.: No.

16 THE JUDGE: -- she, she is the home owner as we
17 would call her and she told the --

18 MS. S.: She doesn't know how to have a home.

19 THE JUDGE: But she asked the police to remove
20 you.

21 MS. S.: Of course she's going to when --

22 THE JUDGE: Now, now, what did the police officers
23 do wrong?

24 MS. S.: Okay. I'm trying to think. I fasted for
25 three days and prayed for three days to make this clear to
26 you and to whoever else here in listening.

27 And they just came in and they were all over top
28 of me -- every single one of them. And there was no, no
29 people there.

30 And if she's going to bring people to the court,
31 she's -- they're all going to lie.

32 If I had a million dollars -- ten thousand, I
33 would definitely grab a good lawyer and read this case.

34 THE JUDGE: Well, the best lawyer in the world

1 can't make a silk purse out of a sow's ear. You understand
2 what I'm saying. And you may be a very honest woman,
3 Miss S., but you were admittedly intoxicated.

4 MS. S.: Yes. I was.

5 THE JUDGE: Now, against your word, you have your
6 own family. I'm presuming that they might testify in court
7 as they did in the statement they gave to the investigators.

8 MS. S.: Oh. They will. I know.

9 THE JUDGE: And there are the four police
10 officers.

11 MS. S.: Well, two of them really --

12 THE JUDGE: And then there's, and, and then
13 there's one or two individuals, no doubt, from Main Street
14 Project where you were lodged and kept for eight and a half
15 hours before you were released. So they would be called to
16 say that you were intoxicated.

17 MS. S.: Yes.

18 THE JUDGE: So how could a court come to the
19 conclusion that your complaint is such that these officers
20 should be punished in some fashion for unprofessional
21 conduct when it will be four officers, three of your
22 relatives, to say nothing of people at the Main Street
23 Project.

24 Now, I understand something happened to you. I'm
25 willing to accept the facts that your leg was injured.

26 MS. S.: Yes. It was. It was broken.

27 THE JUDGE: And there's a x-ray and it was casted
28 I understand.

29 MS. S.: Yes.

30 THE JUDGE: So somewhere, somehow your leg was
31 injured. So that stands in your favour in terms of the fact
32 that you were injured. But how -- see, the police are
33 entitled to use all reasonable force --

34 MS. S.: Well --

1 THE JUDGE: -- to remove you from a home, which
2 was not your own, and then once -- and this is where I do
3 disagree with the commissioner in, in part -- he questions
4 the arrest but the officers were entitled to remove her from
5 the, from the home. And once she is outside the home, she
6 is in a public place and subject to detention under the
7 provisions of The Intoxicated Persons Detention Act.

8 MS. S.: Well, when they threw me in the -- they
9 carried me out like a dead bird, Your Honour.

10 THE JUDGE: Well, that's because you weren't --
11 they claim or others claim that's because you weren't up and
12 walking on your own and you were just sort of --

13 MS. S.: They picked --

14 THE JUDGE: -- holding onto your knapsack --

15 MS. S.: -- me off of a floor.

16 THE JUDGE: Yes.

17 MS. S.: And they picked this arm and my two legs.
18 That's how this one broke right here.

19 And when I woke up in the morning to get out, I
20 said, There's something wrong with my leg. Can you please
21 call an ambulance. And they wouldn't do it.

22 THE JUDGE: Well, that's not the police. I take
23 it that's the people at the Main Street --

24 MS. S.: Yes.

25 THE JUDGE: -- Project?

26 MS. S.: Well, they're dealing with drunks all the
27 time so I guess they figured I was one of their low lifes,
28 which I'm not.

29 THE JUDGE: Well, I can tell you that they do take
30 people to hospital on a regular basis. And my job's not to
31 stand up for the people at Main Street Project but I
32 recently had a emergency medical doctor speaking of the
33 interchange they have between Main Street Project and Health
34 Science Emergency and he says they have a good relationship

1 and they often receive people from Main Street Project who
2 are apparently ill or injured in, in, in some fashion.

3 So I don't think we're -- either of us are here to
4 point the finger at the Main Street Project staff. These
5 aren't trained people. They're not doctors or, or, or
6 nurses.

7 But it's unfortunate they didn't get you to the
8 hospital sooner, ma'am. I, I will agree. But whether they
9 were right or wrong in their assessment, it doesn't really
10 matter. It's what, what the police did that we're here to
11 discuss.

12 MS. S.: Yes. Okay.

13 But anyways, I --

14 THE JUDGE: And, and you're not a large person.
15 You're not, you're tiny but you're, you're not a large --

16 MS. S.: No. I'm a good --

17 THE JUDGE: -- person.

18 MS. S.: -- person, Your Honour.

19 THE JUDGE: And perhaps some of these big officers
20 did injure you when they, when they picked you up and
21 carried you out of the, out of the house. I have no idea.

22 MS. S.: Well --

23 THE JUDGE: But you have to show that they did
24 something wrong.

25 MS. S.: Well, I, I went to the neighbours. They
26 didn't want to get involved, you know. All neighbours --
27 they said, Yes. We remember that day. They did not want to
28 get involved. They said, We don't like that house. It's a
29 party house. And I know that for a fact -- what my aunt
30 does and her daughters. But I'm not going to say that here
31 because I can't.

32 But the way they carried me out of there was --
33 that broke my spirit.

34 THE JUDGE: Well, it broke your leg according to

1 you and I --

2 MS. S.: Both.

3 THE JUDGE: Well, whether you know exactly when it
4 was broken, I, I don't know -- or how it was broken. But it
5 may very well be that between the time they picked you up
6 and the time they took you out of the car at the Main Street
7 Project that you were injured.

8 But, as I say, police are entitled to use
9 reasonable force and sometimes in using reasonable force to
10 restrain someone or to carry them -- I mean placing a person
11 in the back of a car when they're just limp and not
12 cooperating isn't an easy --

13 MS. S.: They threw me in.

14 THE JUDGE: Well ...

15 The bottom line I think is your aunt says that the
16 police did nothing that -- wrong, that they acted
17 professionally.

18 MS. S.: Well, of course she's going to lie.

19 THE JUDGE: And one of -- I think the gentleman
20 there didn't see you going into the car or one of the two
21 didn't see you throughout this incident.

22 MS. S.: My mom doesn't even go over there to
23 visit because they're always borrowing money or something.
24 And, you know, like I also -- I said, I'll never go there,
25 but I go in there and say, How you doing? First thing, Can
26 you lend me some money, you know.

27 The first thing every time.

28 THE JUDGE: Well, ma'am, I, I haven't been to your
29 aunt's home and --

30 MS. S.: Well, don't.

31 THE JUDGE: -- I don't know what goes on there but
32 I do know -- thinking, thinking --

33 MS. S.: I know what's going on there.

34 THE JUDGE: -- back to many, many, many years that

1 -- yeah. Somebody goes to a drinking party with money and
2 the party usually lasts as long as the money lasts. There's
3 always somebody --

4 MS. S.: Exactly. Yes.

5 THE JUDGE: -- going, always somebody going on a
6 beer run.

7 MS. S.: Yes. Every time I come around they know
8 I have money, my credit cards. They say, Oh, V. You know,
9 Lend me six dollars.

10 THE JUDGE: Yes. And --

11 MS. S.: And I say, No. I'm not drinking right
12 now so I fell into it -- got drunk and got beat up.

13 THE JUDGE: Well, I think that's the thing --

14 MS. S.: And robbed.

15 THE JUDGE: -- I think that's the -- one of the
16 problems, Miss S. -- is that when any of us drink too much,
17 we make ourselves very vulnerable --

18 MS. S.: That's true.

19 THE JUDGE: A, because we do things we wouldn't
20 ordinarily do.

21 MS. S.: Of course.

22 THE JUDGE: We might keep company with people we
23 wouldn't ordinarily keep company with.

24 MS. S.: Yes. I understand.

25 THE JUDGE: And if we are victimized, we aren't
26 able to give a credible statement or story about everything
27 that happened because, A, when you are intoxicated or we are
28 intoxicated -- anyone -- your memory doesn't function nearly
29 as well and your credibility is shot essentially because
30 they'll say, Well, this man was drunk. How can we be sure
31 that he has a recollection of what occurred? That's the
32 position that you find yourself in, ma'am.

33 Now, other members of your family may have been
34 drinking. I don't know the state of their intoxication

1 precisely. Some at least were under the -- well under the
2 influence of alcohol.

3 MS. S.: Yes.

4 THE JUDGE: The police officers were presumably --

5 MS. S.: Alcohol and drugs.

6 THE JUDGE: -- sober. Yeah. Alcohol and drugs.

7 MS. S.: I mean big drugs, not little drugs.

8 THE JUDGE: Well, I don't know.

9 MS. S.: I know.

10 THE JUDGE: It sounds like a good place to stay
11 away from.

12 MS. S.: Well, yeah. I've learned my lesson.

13 THE JUDGE: Well I'm ...

14 I'm -- I have sympathy with anyone that has
15 suffered an injury such as, as you did.

16 MS. S.: Well, I felt --

17 THE JUDGE: Especially --

18 MS. S.: Yeah.

19 THE JUDGE: But the commissioner has -- basically
20 has to look and, and determine if this case is vexatious or
21 frivolous and I'm not prepared to say it's, it's frivolous
22 or, or vexatious but the third paragraph of the subsection
23 states that basically is a hopeless case --

24 MS. S.: Yes. I know.

25 THE JUDGE: -- in terms of proof.

26 MS. S.: I know. I was talking to my, my lawyer.
27 He said, V., no. He says, You got a family like that that's
28 going to lie, you have no grounds to stand on.

29 THE JUDGE: And that's -- and I agree with your
30 lawyer.

31 MS. S.: That's why he wouldn't take it.

32 THE JUDGE: Well, the commissioner I think agreed
33 with -- had the same -- came to the same --

34 MS. S.: Yeah.

1 THE JUDGE: -- conclusion --

2 MS. S.: I said, They're all going to lie anyways.

3 THE JUDGE: -- as your lawyer.

4 MS. S.: Then I kept on my head. I said, There's
5 got to be something done. Even if I go before the judge and
6 get an apology, then I'm -- I'll be okay.

7 THE JUDGE: Well, that's not forthcoming that I've
8 heard.

9 MS. S.: Oh.

10 THE JUDGE: I've -- Mr. Weinstein, to your far
11 left or your far right -- I'm sorry -- is here as a
12 representative of these officers.

13 MS. S.: Oh. I see.

14 THE JUDGE: And I, I'm --

15 MS. S.: Is he a policeman?

16 THE JUDGE: -- sure Mr. Weinstein --

17 MS. S.: Is he a police officer himself?

18 THE JUDGE: Yes. He's representing --

19 MR. WEINSTEIN: Oh. I, I -- out of -- I don't know
20 if the question was if -- whether I was a police officer
21 myself.

22 THE JUDGE: Oh, no, Mr. Weinstein's --

23 MR. WEINSTEIN: While I may have that, that, that
24 look I'm --

25 THE JUDGE: He's tall enough and big enough --

26 MR. WEINSTEIN: -- I'm just a lawyer.

27 THE JUDGE: -- to be a police officer but, no.
28 He, he's not.

29 But if --

30 MS. S.: Yeah.

31 THE JUDGE: -- if his clients had instructed him
32 that they were prepared to make an apology, I'm sure
33 Mr. Weinstein would have been on his feet alerting us to
34 that fact.

1 But they aren't here today in any event.

2 MS. S.: Um-hum.

3 THE JUDGE: Because this is not -- I'm, I'm not
4 here to hear any evidence.

5 MS. S.: Okay.

6 THE JUDGE: So that's why they didn't call or they
7 didn't come to court or they didn't call your family to be
8 here to testify. The only purpose we're here together this
9 morning for is to determine if the commissioner --
10 Commissioner Wright -- made a mistake in deciding that there
11 was essentially a case that was futile to proceed further
12 with.

13 And when -- it's a lonely battle you're fighting,
14 Miss S., when it's you --

15 MS. S.: Right.

16 THE JUDGE: -- you against your family --

17 MS. S.: I know it is.

18 THE JUDGE: -- and the four officers. It's, it's
19 a uphill battle and it is essentially a hopeless battle
20 because I cannot possibly foresee, as the commissioner I
21 believe thought, that you would be successful in prosecuting
22 this complaint.

23 MS. S.: Well, they were -- even --

24 THE JUDGE: It may -- I'm --

25 MS. S.: -- bad --

26 THE JUDGE: I say I'm, I'm sorry that you were
27 injured but there's just nothing before the commissioner and
28 nothing before -- when I keep saying nothing before me, what
29 is before me is what was before the commissioner. He passed
30 his file on the statements and the interviews of people.
31 And I'm satisfied that he fairly encapsulated the evidence
32 gathered, including your, your complaint, your relative's
33 complaint. And life's not always fair --

34 MS. S.: Life's not fair at all.

1 THE JUDGE: -- Miss S., but sometimes, sometimes
2 there's simply not a remedy available.

3 MS. S.: That's true.

4 Well, they were even bad-mouthing my mother and I
5 said -- I think that started more because I said, You leave
6 my mom alone, because they're jealous she bought herself a
7 car. She had hers stolen that, that year and she went and
8 bought herself a brand new car and they're jealous. The
9 whole family's jealous of us -- her.

10 THE JUDGE: Yes. That may very well be. I, I
11 don't know these --

12 MS. S.: Because we're upstanding and we --

13 THE JUDGE: I don't know these folk.

14 MS. S.: -- try to behave ourselves.

15 THE JUDGE: No. I don't know these folks and they
16 may be the black sheep of your family.

17 MS. S.: Well, they are. Well, I don't know if
18 they are. I know what they are. Okay? I know who they are
19 and what, and what they're capable of.

20 THE JUDGE: Yes. And you're not here to --

21 MS. S.: He goes around stealing bikes -- E.

22 THE JUDGE: You're not here to bad mouth them.
23 I --

24 MS. S.: No. I don't want --

25 THE JUDGE: -- appreciate you have some --

26 MS. S.: -- to do that.

27 THE JUDGE: -- family loyalty. But they don't
28 have the same loyalty to you apparently that you do to them
29 because they were very critical of you in the statements
30 they gave.

31 MS. S.: Oh. They're jealous of me. Very jealous
32 of me.

33 THE JUDGE: Well, at the end of the day I have to
34 make a decision on whether Mr. Commissioner was right or

1 wrong. I'm prepared to use the most stringent --

2 MS. S.: Well, you go with your heart and it's
3 hard.

4 THE JUDGE: -- most stringent test.

5 Ma'am, I've, I've been in a courtroom almost every
6 day for 35 years.

7 MS. S.: Yes. And you've seen people come and go.

8 THE JUDGE: And I think I have some ability to
9 assess the strengths or weakness of the case, albeit on
10 paper.

11 MS. S.: Um-hum.

12 THE JUDGE: And I believe the commissioner was
13 correct -- absolutely correct in what he did. I'm not
14 saying that you weren't injured and I'm not saying that the
15 police may not have been perhaps a little tougher on you.

16 MS. S.: Well, we --

17 THE JUDGE: They could have been more gentle.
18 But --

19 MS. S.: Of course. I agree with you.

20 THE JUDGE: -- you -- when we look back in
21 retrospect, it wasn't a case where the officers put the
22 boots to you. You know what I mean?

23 MS. S.: No.

24 THE JUDGE: They weren't kicking you and punching
25 you and beating you. And if in lifting you up, one of the
26 officers slipped going down the stairs or into the car and
27 lost or twisted your leg in some fashion, there's no
28 evidence that it was intentional.

29 MS. S.: Well, I still remember how they dragged
30 me out of that house, Your Honour. It's, it's like a
31 nightmare. It's -- to me it's -- like I say, you had to be
32 there to see it.

33 THE JUDGE: Yes.

34 MS. S.: And I was dragging one hand against the

1 ground like this. I said, Stop. You're hurting my leg.
2 Stop. Stop. Stop. Okay. Okay. I'll walk. And they into
3 the back seat and my head went like that.

4 THE JUDGE: Well, it's too bad there weren't
5 people there to see it the way you saw it and the way you
6 remember it. But you're the only one that takes that
7 position.

8 MS. S.: Yeah.

9 THE JUDGE: In any event, I, I'm satisfied that
10 the decision made by the commissioner was correct given the
11 weight of the evidence that was before him.

12 MR. WEINSTEIN: There was just a couple
13 housekeeping matters and I didn't want to interrupt Miss S.
14 when she had started her submissions.

15 The first thing was just, in accordance with the
16 legislation, asking for a ban on publication --

17 THE JUDGE: Yes. There'll be a ban on
18 publication.

19 MR. WEINSTEIN: -- of, of this hearing.

20 And the only other thing, unless the court --
21 unless Your Honour needs me to address any other point -- is
22 you'll see in the commissioners file -- and for the benefit
23 of Miss S. -- to just advise -- and, and I'm not dealing
24 with that argument now -- it was simply that I wanted to put
25 on the record this was a, a complaint that was allowed past
26 the time limitation.

27 At the time that the officers attended for the
28 interview, we had just indicated to, to -- I believe it was
29 Mr. Churley -- that should the matter have progressed to a
30 full hearing, that we would contest the jurisdiction. We
31 would argue that the court could not hear it because the

1 complaint was late.

2 THE JUDGE: Too late.

3 MR. WEINSTEIN: We don't do that -- the process
4 now has been -- we used to potentially try and do that now
5 -- on these section 13 hearings -- to say that Your Honour
6 doesn't have the jurisdiction. You don't have really the
7 authority to hear this because it's beyond the time limit.

8 What your brothers and sisters from the bench have
9 said, in at least two occasions, is it's very difficult to
10 be dealing with that when you have -- you're arguing in a
11 vacuum that there's no evidence. There was evidence -- I
12 think Miss S. had indicated why she had filed the complaint
13 late. She'd indicated that she had fallen into, into some
14 depression, that she wasn't really aware of L.E.R.A. and was
15 advised of it by her counsel.

16 That may well -- that may be all well and good but
17 it's something that we would address if it went to a hearing
18 and would potentially cross-examine on that if it became an
19 issue at the time of the hearing.

20 So I just --

21 THE JUDGE: Well, I, I can --

22 MR. WEINSTEIN: -- wanted to put that on the
23 record.

24 THE JUDGE: -- understand my colleagues expressing
25 their preference that matters proceed as they did today
26 rather than taking the strictly legal approach up front,
27 especially when the applicants in matters of -- the
28 complainants I should say in, in, in matters of this kind
29 are very often not represented.

30 MR. WEINSTEIN: I --

31 THE JUDGE: And the scales -- given the fact as
32 well that they carry the, the burden of proof as it were --
33 burden of argument, certainly it's best if the matter can be
34 decided on the -- on a factual issue before we then resort
35 to the statutes of limitations or other technical matters.

36 The bottom line is, Miss S., that your complaint
37 would not --

1 MS. S.: Hold up.

2 THE JUDGE: That's -- I was searching a word to,
3 to put it but there's just too many other witnesses who do
4 not agree with your complaint. Whether they are telling the
5 truth or not is another matter.

6 MS. S.: Right.

7 THE JUDGE: But from the commissioner's
8 perspective, looking at this, I'm satisfied he came to the
9 correct conclusion.

10 Now that's unfortunate from your position. It's
11 no solace to you I'm sure to know that there are many people
12 that escape due punishment, whether civilly or criminally,
13 in, in, in these matters but the, the onus here is on you to
14 have been able to convince me -- and I, I have no -- I, I
15 don't mind telling you that when I -- before you were even
16 in court I had read some portion or most of the file.
17 There's some handwriting I wasn't able to decipher too, too
18 clearly. But I think you're being commended to taking the
19 time and following this true -- this through. One has to
20 have the -- sort of the strength of one's convictions and,
21 and continue on as you have and you're being -- you're
22 making your complaint albeit belatedly. And coming here
23 today shows that you're a, a woman of conviction.

24 MS. S.: I like to --

25 THE JUDGE: And you've followed through on this.

26 But regardless of the rights or the wrongs of
27 this, just looking at the case that was presented to the
28 commissioner -- now, this is about the third time I will
29 have said it and it'll be the last time.

30 MS. S.: Okay.

31 THE JUDGE: Using the strictest interpretation --
32 most onerous on the commissioner, I'm satisfied he was
33 correct.

34 MS. S.: Okay.

35 THE JUDGE: So thank you, ma'am.

36 MS. S.: Thank you.

37 THE JUDGE: Thank you.

1 THE CLERK: Order. All rise. Court stands
2 closed.
3
4 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I hereby certify the foregoing pages of printed matter, numbered 1 to 23, are a true and accurate transcript of the proceedings, transcribed by me to the best of my skill and ability.

JUDY BONDARENKO
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