

IN THE MATTER OF

The *Royal Newfoundland
Constabulary Act*,
S.N. 1992, c.R-17 ("Act")

AND

The *Royal Newfoundland
Constabulary Public Complaints
Regulations*, CNR 970/96
("Regulations")

AND

IN THE MATTER of a Complaint
made by Donna Reid ("Complaint")

IN THE MATTER OF A PUBLIC HEARING

BETWEEN:

ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSION

COMMISSIONER

AND:

CONSTABLE MARLENE JESSO
Regimental No. 378

F I R S T

RESPONDENT

AND:

Constable Patrick R. ROCHE,
Regimental No. 482

S E C O N D

RESPONDENT

AND:

CHIEF OF POLICE,
The Royal Newfoundland Constabulary

INTERVENOR

DECISION

INTRODUCTION

On January 27th, 1997 Donna Reid filed a complaint with the Royal

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Newfoundland Constabulary Complaints Commission (the "Commission") against Constable Patrick R. Roche Regimental Number 482 and Constable Marlene Jesso Regimental Number 376 concerning their conduct as a result of an incident which occurred on January 7th, 1997.

The Chief of Police commenced an investigation and dismissed the complaint against Constable Roche and Constable Jesso. Donna Reid appealed the decision of the Chief of Police to the Commissioner. The Commissioner, having conducted an investigation, did not dismiss the complaint or confirm the decision of the Chief of Police. The matter was referred to an adjudicator, Robert M. Sinclair, Q.C., on December 31st, 1997. Mr. Sinclair heard the evidence of the Commissioner, however, on January 5th, 1999, he determined that he was in a conflict of interest and accordingly recused himself as adjudicator. The matter was then referred to me on March 11th, 1999 to conduct a Public Hearing pursuant to the Act and Regulations.

Constable Marlene Jesso, Regimental Number 378 is alleged to have negligently performed her duties thereby engaging in conduct

unbecoming a Police Officer and liable to bring discredit upon the Constabulary, particulars of which are as follows:

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1. failing to undertake a thorough and timely investigation into a complaint from Donna Reid on 1997 01 07;
2. inappropriately charging Donna Reid with a breach of Section 72(1)/73(b) C.C. on 1997 01 07; and
3. not providing Donna Reid with the opportunity to receive medical assistance on 1997 01 07.

Constable Patrick R. Roche, Regimental Number 482 is alleged to have negligently performed his duties thereby engaging in conduct unbecoming a Police Officer and liable to bring discredit upon the Constabulary, particulars of which are as follows:

1. failing to undertake a thorough and timely investigation into a complaint from Donna Reid on 1997 01 07;
2. inappropriately charging Donna Reid with a breach of Section 72(1)/73(b) C.C. on 1997 01 07;

3. inappropriately arresting Donna Reid on 1997 01 07, thereby committing a violation of Donna Reid's constitutional rights, and

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4. not providing Donna Reid with the opportunity to receive medical assistance on 1997 01 07.

The Hearing in the matter was held in St. John's from September 22nd to September 24th, September 26th to September 28th, and November 29th to December 1st, 1999. Present at the Hearing was Janet Hanley-Andrews, representing the Commissioner, William Cardigan, representing Constable Marlene Jesso, James G. Walsh, representing Constable Patrick R. Roche and Paul Noble, representing the Chief of Police. Prior to the Hearing, the Commissioner withdrew the allegation against Constable Marlene Jesso that she inappropriately charged Donna Reid with a breach of Section 72(1)73(b) C.C. on 1997 01 07. The same allegation against Constable Patrick Roche was withdrawn as was the allegation that he inappropriately arrested Donna Reid on 1997 01 07, thereby committing a violation of Donna Reid's constitutional rights.

At the conclusion of the Commissioner's Case, a motion was made by Counsel for Constable Jesso and Constable Roche to dismiss the

complaints because there was insufficient evidence upon which I could conclude that the allegations of misconduct were made out. The complaint against Constable Jesso and Constable Roche that they

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Did not provide Donna Reid with the opportunity to receive medical assistance on 1996 01 07 was dismissed.

The issue upon which I must now adjudicate is whether Constable Jesso and Constable Roche negligently performed their duties thereby engaging in conduct unbecoming a Police Officer and liable to bring discredit upon the Constabulary by failing to undertake a thorough and timely investigation into a complaint of assault from Donna Reid on 1997 01 07.

At the hearing, viva voce evidence was given by Donna Reid and her husband, Gary Reid, Marie Williams, Inspector Joseph Brown, Constable Patrick Roche, Constable Marlene Jesso, Retired Inspector Desmond Peddle, Staff Sergeant Robert Johnston and Inspector Calvin Singleton. A transcript of the testimony of Constable Greg Hobbs and Constable Todd Barron before Adjudicator Sinclair was entered by consent.

The incident giving rise to this complaint occurred on January 7th, 1997. At the time Constable Roche had been a member of the Royal Newfoundland Constabulary for almost 12 years. He has been assigned to the Criminal Investigation Division (the "C.I.D.") since June of 1991.

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He was assigned to the Sexual Offence Unit from June of 1991 to November of 1993 and then assigned to Major Crimes until the spring of 1998. Constable Jesso had been a member of the Royal Newfoundland Constabulary for approximately 14 years. She was also signed to the C.I.D. On January 07, 1997 she was assigned to the Sexual Offence Unit of the C.I.D. Both officers had extensive training and experience.

BACKGROUND

Some background information is relevant to the incident giving rise to this complaint. Early in the morning of January 7th, 1997 Donna Reid, the Complainant, received a telephone call asking her to contact Bill Rowe on the local Open Line program. He wanted to speak with her concerning her hunger strike. She made public her views that her brother, Randy Druken, has been wrongfully convicted of the murder of his girlfriend, Brenda young. The complainant's brother, Derek Druken, was shot and

killed outside the Theatre Pharmacy in downtown St. John's on November 20th, 1996. The complainant's brother, Jody Druken, was arrested for the murder of his brother, Derek. After Donna Reid spoke on the radio, her mother Shirley Druken and her sister, Sharon Druken Fitzgerald

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called in. It appears that all were critical of each other. There was dissension in the family and the family was well known at the Major Crime Section of the C.I.D. of the Royal Newfoundland Constabulary.

As a result of what was said on the program, Donna Reid left her home at 1 Drake Crescent and went by taxi to 150 Higgins Line, the home which her mother shared with her partner Jack Ring (sometimes referred to as John) and in which Donna Reid's sister, Sharon Druken Fitzgerald, lived in the basement apartment. The address was 150 Higgins Line. Marie Williams, a friend of Donna Reid, arrived at 150 Higgins Line at the same time that Donna Reid arrived by taxi. She accompanied Donna Reid to the door.

Irrespective of why Donna Reid went to her mother's house or why Marie Williams accompanied her, there is conflicting evidence as to what actually happened during the few minutes that she was at

the residence. This will be dealt with in detail later on in this decision.

THE EVIDENCE

A review of the 911 tapes provides the chronology of events from 11:35 a.m. to 12:32 p.m. on January 07, 1997.

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At 11:35 on January 7th, 1997 Gary Reid, husband of Donna Reid, called the RNC Communication Centre and spoke with Constable Moss. He told her that Donna left to go over to punch Sharon. He asked to get a police car over there as quickly as she could and asked that they not arrest Donna. He also asked her to get a car over to stop Donna.

At 11:37 Shirley Druken called the Communication Centre asking for the police to come to 150 Higgins Line. She said Donna Reid came there and shoved her way in through the door. She tried to shut the door and Mr. Ring had to shove her out and she went down on the snow. She said she didn't want to talk to her and when she shut the door Donna Reid forced the door open and came in on the floor and Mr. Ring went down and he grabbed her and threw her out on the lawn.

At 11:38 Constable Moss attempted to contact Lieutenant Singleton. She sought approval from Sergeant Lahey to dispatch a car to Higgins Line because she believed Donna Reid went there and pushed her way into Sharon's.

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At 11:40 Constable Moss dispatched Constable Joseph Boland and Constable Todd Barron to 150 Higgins Line.

At 11:43 Gary Reid called the Communications Centre again. He spoke with Constable Reid and he inquired whether a patrol car had been sent to 150 Higgins Line. He hung up when he realized that his wife was home.

At 11:43 Constable Moss spoke with Lieutenant Singleton. He was advised that Donna Reid assaulted Sharon Druken in her house, that Gary Reid had called and that it all stemmed from an open line program.

At 11:46 Gary Reid called the RNC again. He lodged a complaint against John Ring for the assault of his wife, Donna Reid. He was asked to wait until they dealt with the other side and told the police would be over to talk to Donna.

At 11:59 Gary Reid called RNC Communications Centre again. He asked to have a unit sent to 1 Drake Crescent because Donna was seriously injured. Constable Grace told him that they were already

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on Higgins Line and he was advised to make sure that she obtained medical help.

In the intervening time Constable Roche and Constable Jesso were assigned the file. Their involvement will be detailed in the review of their evidence and that of their supervisors.

At 11:59 Constable Roche spoke with Constable Moss at Communications. Constable Moss also spoke with Constable Barron and advised him that Donna Reid was at home and that she was seriously injured. Constable Barron commented that they would have to get someone else down there to deal with that.

Donna Reid called the RNC Communications Centre at 12:09. She was advised to go to the hospital to have her injuries examined. Gary Reid advised that Donna refused to go to the hospital

because she wanted a police car to come by. They were told that a car would be sent.

At 12:13 Constable Barron called Constable Moss and he stated that this was blown up a bit as far as he is concerned. He was advised that Donna Reid was making a counter complaint of assault against John Ring. He was asked to inform Constable Roche.

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At 12:27 Gary Reid called the Communications Centre and once again asked that an officer come to 1 Drake Crescent to take a statement.

At 12:32 an ambulance driver called the Communications Centre and advised that they were going to 1 Drake Crescent for Donna Reid.

The further chronology of events will be reviewed as we examine the involvement of Constable Roche and Constable Jesso.

Former Inspector Peddle, a member of the RNC for 25 years, recalled the incident of January 7th, 1997. He was in charge of operations on that date. He was aware of what transpired on the Open Line program and he met with Staff Sergeant Robert Johnston and Inspector Calvin Singleton to discuss their perception of what was happening at 150 Higgins Line. Because of the parties

involved and the knowledge that two camps were unfolding in the family with respect to the shooting which took place in November of 1996, it was decided to involve the C.I.D. They did not want to send an officer who had involvement with the family. Constable Roche was dispatched and Constable Jesso attended the call with him. Retired Inspector Peddle gave evidence that Constable Roche was the lead investigator as he was the officer in the Crimes Against Persons Unit.

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Staff Sergeant Robert Johnston, a member of the RNC for 20 ½ years and a member of the CID for 14 years as the officer in charge of Crimes Against Persons recalled what happened on January 7th, 1997. While in his view the complaint was not serious per se, there was sensitivity around the issue because of the people involved.

Inspector Calvin Singleton (then lieutenant) was a member of the RNC for 19 years and the officer in charge of the Crimes Against Persons Section of the C.I.D. on January 7th, 1997. Staff Sergeant Robert Johnston reported to him and he in turn reported to Inspector Desmond Peddle. He recalled the incident of January 7th, 1997.

The evidence of all three officers is consistent with respect to what transpired, why the C.I.D was involved, that Constable Roche was the lead investigator assigned to the file and that he was instructed to report back to them.

Constable Roche testified on his own behalf. Staff Sergeant Robert Johnston was his direct supervisor. He was asked by Staff Sergeant

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Johnston to go to 150 Higgins Line with Constable Jesso to speak with the street patrol and to return to headquarters and brief his supervisors. While on route he heard a conversation between Constable Moss at the Communications Centre and Constable Hobbs. Constable Hobbs was being dispatched to Donna Reid's residence at 1 Drake Crescent to investigate Donna Reid's complaint of assault against John Ring. He intercepted Constable Hobbs. The transcript of the conversation at 12:14 confirmed that Constable Moss informed Constable Roche that Donna Reid was insistent on seeing the police, that she was injured, that she was resisting receiving medical attention and that she wanted the police to visit her. Constable Roche told Constable Moss to hold off. He

was on his way to Higgins Line and Constable Moss and Constable Hobbs were to leave matters as they were advised by him.

From the transcripts filed in evidence by consent, we know that Constable Barron and his partner, Constable Boland, arrived at 150 Higgins Line at 11:54 on January 7th, 1997. When he became aware of Donna Reid's counter complaint of assault he asked Constable Moss to send somebody else to 1 Drake Crescent. He confirmed that his partner was taking a statement from Shirley Druken, that Constable Roche and Constable Jesso had arrived and that he was asked by Constable Roche to take a statement from Sharon Druken Fitzgerald

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and Jack Ring. The statement of Shirley Druken was taken prior to Constable Boland being aware of the assault counter complaint and the other statements were taken after this.

We know from the testimony of Constable Hobbs that although asked to go to Donna Reid's residence, at the request of Constable Roche, he did not go there.

From the testimony of Constable Roche and his Continuation Report, which was tendered in evidence, we have a chronology of his involvement. We know that he was assigned the file at

approximately 11:55 on January 7th, by Staff Sergeant Johnston. From discussion with his superiors, his information was that Donna Reid had forced her way into 150 Higgins Line and had assaulted Sharon Fitzgerald Druken. As we later learn, this information was not accurate. He attended the scene accompanied by Constable Marlene Jesso at 12:15. We already know that Constable Barron and Boland were there and the statement of Shirley Druken was completed. Constable Roche instructed Constable Barron to take statements from Jack Ring and Sharon Fitzgerald Druken. While there Constable Roche spoke briefly with Shirley Druken, Sharon Fitzgerald Druken and Jack Ring.

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While on route to 150 Higgins Line, Constable Roche was aware that Donna Reid wished to lay a complaint of assault against Jack Ring. He knew that Constable Hobbs had been dispatched to 1 Drake Crescent and he told him not to go. Upon leaving 150 Higgins Line Constable Roche returned to headquarters at 12:35 and he alone met with the then Inspector Peddle, Lieutenant Singleton and Staff Sergeant Johnston. Discussions took place over what charges should be laid. At 12:50 he spoke with Gary Reid and was informed that Donna Reid had gone to hospital. He was given the name of the taxi driver who took Donna Reid to 150 Higgins Line. Constable Boland subsequently returned to headquarters and

provided Constable Roche with the statements of Shirley Druken, Jack Ring and Sharon Fitzgerald Druken that were reviewed by him and another meeting took place between Constable Roche and his supervisors. Inspector Peddle contacted Crown Attorney Tom Mills in Constable Roche's presence and it was determined that there were reasonable and probable grounds sufficient to lay a charge of forcible entry against Donna Reid. It is noted that Constable Roche did attend on the taxi driver and obtain a statement between 1:15 and 1:34. He did not inquire of the whereabouts of Marie Power (whom we know to be Marie Williams) although he knew that she had accompanied Donna Reid to 150 Higgins Line.

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In the meantime, Constable Roche was aware that Donna Reid had gone to St. Clare's Hospital. He was informed of this by Gary Reid and he called St. Clare's to confirm this fact. He attended at St. Clare's with Constable Jesso. Although he did not speak to Donna Reid, he saw her there.

The following day at 9:30 a.m. Constable Roche attended at Provincial Court. He was advised that Donna Reid had been hospitalised overnight. Gary Reid, her husband, introduced him to Marie Williams, the lady who had accompanied Donna Reid to 150 Higgins Line the day before. He and Sergeant Paul Hierlihy met

with Marie Williams on January 8th at 2:10 p.m. at headquarters to take a statement from her. On January 8th, Constable Roche advised Gary Reid that no assault charges would be laid against Jack Ring.

Donna Reid testified that she was publicly critical of the RNC concerning the death of Brenda Young and the involvement of her brothers, Randy and Derek Druken. This was the subject of the discussion on the Open Line program. Her evidence was that she went to Higgins Line to get her mother to listen to her views and not those of her sister Sharon. She just wanted to get some facts straight. Her intention was not to cause trouble. She asked her

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friend, Marie Williams, to drive her. When she refused, she hailed a taxi. She testified that Marie Williams followed in her own car, both arrived at the same time and Marie Williams was with her when she knocked on her mother's door.

Her testimony was that her knock was a normal knock, her mother opened the door and she knew nothing until the door was shut tight and her fingers were squat. As she was trying to get her fingers out of the door, howling and knocking, Mr. Ring jumped

from the second step down and shoved her whereupon she went through the air and came down and hit the ground. The pain took her breath. She was bent over and couldn't get up. She says she never entered the residence. In the company, of Marie Williams, she returned home. She was injured and she wanted Jack Ring changed with assault. She wanted the police to come to her home to take a statement before she obtained treatment for her injuries. She testified that there was no ice present in the area of which she fell. Notwithstanding that her evidence before me was that Jack Ring shoved her or pushed her, when she gave her cautioned video taped statement approximately three and one-half hours after the incident occurred, her recall was inconsistent. She denied entering the residence. One explanation was such that the door was closed, it was flung open by Jack Ring who was chocking her and throwing her on the

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concrete. Another explanation saw Jack Ring jump from the second floor and throw her down on the concrete. This would indicate that the door was open.

Marie Williams gave a statement to Constable Roche; the statement was put in evidence before me as a business record.

Marie Williams testified before me. She did not think it was advisable for Donna Reid to go to her mother's residence. She entered the walkway with Donna Reid and stood to her right side as she knocked on the door. Shirley Druken opened the door, the door was shut with Donna Reid's fingers getting stuck in the door, Donna was howling, the door opened, Donna was holding her fingers, Jack Ring came flying through the door and pushed her in the chest. She says they were standing on a concrete slab. There was no ice. She has a bad back and would have noticed ice if it was there. Donna fell, she helped her up and took her home.

Statements were taken from all other persons who were present at Higgins Line. Constable Boland took a statement from Shirley Druken and Jack Ring. Constable Barron took a statement from Sharon Fitzgerald Druken and Constable Roche took a statement from the taxi driver, Robert Martin. All statements were entered as

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consent exhibits.

The substance of Shirley Druken's statement is that Donna knocked heavily on the door and she opened it. She told her to get away from the door but when she tried to shut the door Donna forced it

open and came in the hall. John Ring came down and pushed her out the door. She slipped on ice and fell on the lawn.

Sharon Druken Fitzgerald stated there was a knock which turned into a heavy banging. She was on the phone in the kitchen. She could see Donna at the door and her mother was trying to push the door closed to get Donna out of the house. Her mother could not get the door closed and Donna ended up in the front porch. Jack came out went to the doorway, pushed Donna through the door and slammed the door shut.

John Ring stated there was a banging on the door and Shirley opened it. He heard Donna Reid. She was screaming and Sharon shouted out for me to help Shirley. He went down the stairs to the front door. Shirley was trying to get the door closed. Donna was inside with the door forced open. He thought she was hurting Shirley and he pushed Donna out through the front door. Donna fell on the lawn.

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Mr. Martin confirmed that he taxied Donna Reid to 150 Higgins Line. The content of his statement is of no assistance to me in my deliberations. It merely confirms that he was present and

that he was interviewed by Constable Roche as to his knowledge of the incident.

There is no dispute that the incident took place in just a few minutes. Donna Reid returned home with Marie Williams. By her testimony, Donna Reid knew she was injured. She was not, however, interested in obtaining medical treatment until she had the opportunity to lay assault charges against Jack Ring. She wanted a police officer to come to her home. She reluctantly sought medical attention at St. Clare's before giving a statement.

She went to the hospital shortly after 12:30 on January 07, 1997. By her own testimony she was examined by a Doctor, advised that she could have broken ribs and sent for x-rays. Before the x-rays were taken she left the hospital and attended at RNC Headquarters at about 3 o'clock because she wanted Mr. Ring charged. As events unfolded she was arrested for forcible entry and a voluntary cautioned video taped interview was given by her to Constable Roche and Constable Jesso. This commenced at 3:16 p.m. and concluded at 3:33 p.m. After the interview Donna Reid was handcuffed, escorted

to a holding cell at Provincial Court by Constable Jesso and another officer and brought before Judge John Roche. The Crown would not consent to her release and she was remanded overnight to be examined by a Doctor. Most unfortunately, she suffered a collapsed lung and needed to be transported to hospital.

Constable Jesso testified on her own behalf. She was not the lead investigator. She was not assigned to Major Crime. She was merely assisting Constable Roche who took the lead. She attended at 150 Higgins Line with Constable Roche. He spoke with the witnesses there. She did not. He spoke with communications, instructed Constable Hobbs not to go to Drake Crescent, requested the taking of statements, reported back to his supervisors and made the decisions about the charges. She was not present at the meetings between Constable Roche and his supervisors and had no involvement with the preparation of the Justice Report. She was present during the video taped interview of Donna Reid and escorted her to the holding cell at Provincial Court. She completed her continuation report of her involvement. Her evidence is consistent with the evidence of Constable Roche and his supervisors with respect to her involvement and role in this matter. Her observation of the

presence of ice at the scene is consistent with the observation and notes of Constable Roche. In the interview Constable Roche questioned Donna Reid about the steps being covered with ice. Constable Jesso confirmed her observation that they were.

Inspector Joseph Brown was called as a witness by Commission Counsel. He has been a member of the RNC for 17 years. On January 07 1997 he was thoroughly familiar with the operational and policy procedures for the force. His evidence was helpful in that he provided a synopsis of the internal structure of the RNC and the roles of the various individuals having input with respect to the incident which took place on January 07 1997.

A package of documents, which could generally be described as policy manual excerpts, guidelines, and routine orders, and a users manual respecting differential police response, was entered through Inspector Brown. The latter creates call classification tables and a matrix through which a dispatcher is assisted in determining the priority of response to calls for service. Priority 1 calls, for example, have an immediate response time and Priority 2 calls have a response time of thirty minutes. More will be said about the relevance of this evidence as we move

on. Of the package of documents, the exhibit entitled Criminal Investigation Division

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(JB#8) is helpful in that it sets guidelines for conducting general criminal investigations. The relevant provisions of the policy with respect to the investigation of a complaint and, as Inspector Brown testified, of a counter complaint are reproduced as follows:

1. **Introduction:**

The success of criminal investigation depends upon an organized approach by police investigators. To ensure maximum opportunity for solution of a crime, the investigation must be timely, thorough and complete.

The investigative steps in this chapter are for use as a guideline in general criminal investigations and are for use in conjunction with instructions contained within this manual which deal with specific, offences and/or circumstances.

2. **Initial Investigation:**

The first member at the scene of a crime must be aware that the preliminary investigation may be sufficient to

bring the case to a satisfactory conclusion. Initial investigative steps to ensure a thorough investigation include:

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- a. observing all conditions, events and remarks,
- b. locating and identifying all witnesses,
- c. maintaining the crime scene and protecting evidence,
- d. requesting R.N.C. resource personnel as required,
- e. interviewing the complainant and available witnesses,
- f. locating and arresting the suspect at or near the scene,
- g. arranging for the collection of evidence,
- h. reporting the incident fully and accurately.

Members attending the scene of serious crimes, particularly murder, where it is expected that the introduction of statements made by an accused will be the subject of a voir dire, are not to actively pursue interrogation of suspects. Should an accused make an admission or other statement without prompting, detailed

notes are to be made by attending members. Interrogation of suspects involved in serious crimes is a function best conducted by Investigators at the C.I.D. level.

Inspector Brown testified that he had reviewed the RNC files

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with respect to the incident. There were two files: 97-489 was assigned to the forcible entry complaint against Donna Reid and 97-497 was assigned to the counter complaint of assault by Donna Reid. There was little of consequence in 97-497 but it was cross-referenced with 97-489.

Inspector Brown reviewed the file and confirmed that file # 97-489 contained the following statements, dates and times:

Shirley Druken	January 07 1997	11:57 a.m.
Sharon Druken Fitzgerald	January 07 1997	12:26 p.m.
John Ring	January 07 1997	12:25 p.m.
Robert Martin	January 07 1997	1:15 p.m.
Donna Reid	January 07 1997	3:16 p.m.
Marie Williams	January 08 1997	2:10 p.m.

The charge against Constable Jesso and Constable Roche is that they negligently performed their duties thereby engaging in conduct unbecoming a Police Officer and liable to bring discredit upon the Constabulary by failing to undertake a thorough and timely investigation into a complaint of assault from Donna Reid on January 07 1997. The onus to prove the charge rests with the Commissioner. The burden of proof is on the balance of probabilities.

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As I view the evidence, the involvement of Constable Jesso with respect to the investigation was minimal. I accept her evidence as to her involvement. While she was assigned to assist Constable Roche there is no evidence before me upon which I could conclude that she was charged with the responsibility of conducting this investigation. The evidence of Constable Roche and that of his three supervisors, in all respects, supports this conclusion.

While Ms. Andrew's submissions pertained to both Constable Jesso and Roche, as I have found that Constable Jesso was not charged with conducting the investigation, these submissions will be analysed only in so far as they apply to Constable Roche.

As the officer in charge of this investigation, it is clear that it was the responsibility of Constable Roche to undertake a thorough and timely investigation into the counter complaint of assault by Donna Reid. In fact, as his supervisors have testified, it was his responsibility to undertake and investigate a thorough and timely investigation into the circumstances of what happened at 150 Higgins Line. This involved the investigation of one incident - two allegations.

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This involved the investigation of the complaint of forcible entry and the counter complaint of assault.

Ms. Andrews argues that the investigation of the counter complaint was not timely. She states that the investigation would have been timely had Constable Hobbs continued on to Drake Crescent in response to the service call and the dispatch of Constable Moss. She argues that Constable Roche prevented a timely investigation by calling him off and thereby preventing a response within the required thirty minutes.

I do not accept this argument. The evidence is clear that the communications centre assesses the priority of calls. A

review of the Differential Police Response User Manual indicates that the call would rate a classification number of 1210. This is a priority 1 call and the response time is immediate, not thirty minutes. If the response time was immediate, and I find that the manual indicates it was, then, to the extent that this has any relevance whatsoever, the investigation could not have been timely before Constable Roche actually cancelled the dispatch. In any case, the focus on timeliness in this manner is entirely too narrow. In my

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view, timeliness must go to the time it takes to conduct the investigation, to observe conditions, events and remarks, to locate and identify witnesses, to interview the complainant and witnesses, to collect evidence and to report the incident fully and accurately. In my view, the investigation was timely. I say this with respect to the investigation of the entire circumstances of what happened at Higgins Line on January 07 1997. I do not separate the investigation of the forcible entry complaint from the assault complaint as the evidence is clear that all persons involved with or having knowledge of the incident giving

rise to the two allegations were interviewed in less than twenty seven hours.

To turn now to whether the investigation was thorough, commission counsel argues that it was not. The substance of her argument appears to be that the investigation was so focused on the forcible entry, that any attention to the assault counter complaint was incidental. She finds support for her argument in the fact that Constable Boland and Constable Barron were dispatched to Higgins Line to investigate a forcible entry complaint. Constable Barron was not aware of Donna Reid's counter complaint until after Shirley Druken's statement was taken. He was not asked to

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reinterview her with the focus being the elements of the assault and in particular the use of reasonable force. She argues that none of the statements obtained explore the issue of reasonable force. In summary, while interviewed, they were not properly interviewed. She further argues that Constable Barron did not believe he was investigating the assault complaint as he instructed Constable Moss to send someone else over to Donna Reid's residence.

Constable Roche testified that he saw no need to have the witnesses reinterviewed. He was satisfied that after he attended at 150 Higgins Line and the statements obtained were reviewed by him with his supervisors and discussed with the Crown Attorney's Office, that he had reasonable and probable grounds to lay a charge against Donna Reid. He had observed ice on the walkway. I accept his evidence that he cautioned Constable Jesso to be careful. His interrogation of Donna Reid, while focused on the entry, did, with the assistance of questioning by Constable Jesso, focus on the assault. By 3:33 on January 08 1997 he was aware of Donna Reid's version of the incident, he had personal knowledge of the presence of ice, which she denied, and he concluded that her statement contained inconsistencies about how Mr. Ring threw her to the

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ground and whether the front door was closed or open. It is of note that in her evidence before me Ms. Reid described the contact by Jack Ring differently than in her statement. She commented herself that what she said in her statement did not make sense. Constable Roche had reasonable and probable grounds to conclude that she had entered the house. He interviewed Marie Williams. Her statement is not in evidence as proof of its contents but merely as a business

record. It appears that he gave no weight to her statement because she was a long-time friend of the complainant. From the Justice Report, he does summarize her statement. This confirms and is consistent with the testimony of Ms. Williams before me that Mr. Ring struck Ms. Reid in the upper chest causing her to fall to the ground.

By late afternoon of January 08 1997 Constable Roche had concluded his investigation. He informed Donna Reid's husband that he did not intend to charge John Ring. His Continuation Report entry of January 14 1997 notes an inquiry from Donna Reid's lawyer as to why John Ring has not been charged and refers to discussions with staff Sergeant Johnston and Lieutenant Singleton and their concurrence that assault charges would not be laid. This is consistent with their

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evidence. As stated above, Constable Roche's supervisors testified this was not a complicated investigation. Retired

Inspector Peddle stated the investigation was in his opinion timely and thorough. He could not say that there was anything else that could have been done. He saw no need for reinterviewing witnesses because there was no need for

clarification. Then Lieutenant Singleton concurred with Retired Inspector Peddle. Staff Sergeant Johnston went further. He stated that if he had concerns with the handling of the investigation or with the contents of the statements it would have been incumbent on him to have the witnesses reinterviewed. He saw no such need.

The evidence of all three supervisors was clear. Examining the whole picture, the investigation was complete and appropriate charges were laid. I cannot ignore this evidence.

As the lead officer in charge of this investigation it is clear that it was Constable Roches' duty to fully investigate the conduct of Donna Reid and Jack Ring on January 07 1997 to determine whether he had reasonable and probable grounds to lay charges. The complaint of Shirley Druken was thoroughly investigated. Donna Reid was arrested and charged with

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forcible entry. Donna Reid wanted Jack Ring charged with assault. The issue before me is whether the Commissioner has

introduced evidence which on a balance of probabilities establishes that Constable Roche did not thoroughly investigate her counter complaint of assault. It is not for me to determine whether the conclusion reached by Constable Roche can be supported by the evidence. It is a question of whether the steps he took constituted a thorough investigation.

Although Donna Reid's statement concerning the alleged assault was taken after Constable Roche had determined he had reasonable and probable grounds to arrest her for forcible entry, and she was in fact arrested, the circumstances surrounding the alleged assault were fully explored with her. Although Marie Williams was not interviewed on the 7th of January, she was interviewed within 27 hours of the incident. It is not for me to say what weight should or should not have been assigned to her statement. Constable Roche was aware that Jack Ring pushed Donna Reid and she fell. Jack Ring admitted that he pushed her and she fell on the lawn. So did Shirley Druken and Sharon Druken Fitzgerald. Constable Roche was also aware that ice was a factor. Both he and Constable

Jesso noted its presence. Marie Williams says if it was there she would have noticed because of her back. She was mistaken.

I am inclined to the view that Constable Roche had the full picture of what happened with respect to this incident. He did not have an honest belief that reasonable and probable grounds existed to charge Mr. Ring. I am not persuaded on the evidence that there was anything else he could have done or any other information that he could have obtained to make his investigation more thorough.

In conclusion therefore, I find that the complaint against Constable Roche and against Constable Jesso has not been made out. The charge against both is dismissed. I make no order as to costs.

DATED AT St. John's, Newfoundland this day of , A. D.
2000.

LINDA M. ROSE, Q.C.,
ADJUDICATOR

