IN THE MATTER OF: *The Law Enforcement Review Act*
Complaint #2005-343

AND IN THE MATTER OF: An Application pursuant to s. 17 of *The Law Enforcement Review* Act, R.S.M. 1987, c.L75

BETWEEN:

J.W.	) Mr. Peter Tonge
Complainant	) for the Complainant
	)
- and -	)
	)
Constable K.G.	) Mr. Josh Weinstein
Respondent	) for the Respondent
	)
	) Hearing: May 26 and 27, 2010
	) Decision: November 25, 2010

These Reasons are subject to a ban on publication of the Respondent's name pursuant to section 25 of *The Law Enforcement Review Act,* R.S.M. 1987, c. L75.

L. MARTIN, P.J.

I. INTRODUCTION

[1] On October 1, 2005, Constable K.G. and his partner, Constable C.W. attended J.W.'s residence to look for her son who was missing from his foster home. It was J.W.'s interaction with Constable K.G. on October 1st, 2005 that led to her filing a complaint with the Law Enforcement Review Commission ("Commission") pursuant to *The Law Enforcement Review Act* ("Act"). That complaint alleges:

> 1. That Constable K.G. abused his authority by using oppressive or abusive conduct or language contrary to section 29(a)(iii) of the Act;
>
> 2. That Constable K.G. abused his authority by the use of differential treatment without reasonable cause on the basis of any characteristic set out

in subsection 9(2) of *The Human Rights Code* contrary to section 29(a)(vii) of the Act.

[2] Unable to resolve the complaint under sections 15 or 16 of the Act, the Commission referred it to a Provincial Judge for hearing on the merits in accordance with subsection 17(1) of the Act.

II. THE EVIDENCE

[3] To a large extent the evidence as to what transpired on October 1, 2005 is not in dispute. On that day, Constable K.G. and his partner, Constable C.W. received a 911 call of a missing 8 year old child. The child, J.W.'s son, was a ward of Child and Family Services and had gone missing from his foster home. Information received by the two officers indicated that the child had gone missing before and had been located at J.W.'s residence. It was on the basis of this information that both officers attended to J.W.'s home. Once there, J.W. refused to allow the officers to enter her home to ensure that her son was not present. Both officers gained entry to J.W.'s residence despite her lack of consent. Subsequently, there was a verbal exchange notably between Constable K.G. and J.W. that was captured on audiotape. What transpired before that audiotape was turned on is in dispute.

J.W.'s testimony

[4] J.W. is a 42 year old First Nations woman. She testified that on October 1st, 2005, two uniformed police officers knocked on her front door. The front door was open but the screen door was closed and secured with a make-shift handle. The officers asked if her son was there and she replied no. They then asked if they could come in and search at which point she asked if they had a search warrant. When they replied no, she said: "Well, you need a search warrant", then turned and walked away. She testified that the officers entered her residence and started to swear at her. One of the officers said: "Sit the F down, we are going to effing search your effing house", which they began to do. One officer went downstairs and the other went upstairs. J.W. decided to tape record the subsequent interaction. She also left her house and returned with her next door neighbour, J.D. From that point forward, the audiotape captures the interaction between Constable K.G., Constable C.W., J.D. and J.W. The tape, though unintelligible in certain portions, roughly records the following:

Officer: Oh wasn't that easy eh. (inaudible)

J.W. Bye.

Officer: I'll leave when I'm ready (inaudible) I'm gonna guess it took you as long to lose your kid as it did for us to look for him. Mother of the year.

(inaudible)

J.W. I don't see why you should be swearing after you illegally searched my house.

(inaudible)

Officer: I don't need a search warrant.

J.W. Well you just kicked my door open.

Officer: No I didn't.

J.W. Yes you did, you just (inaudible) in you kicked my door open.

Officer: No I didn't, nope sorry.

J.W. Yes you did.

Officer: Call the police. Oh oh we are the police oh ya ha ha.

(inaudible)

Female: What's the number?

Officer: I'm not concerned ma'am take it. Take it.

Female: Agent ___ and ____?

Officer: Go ahead. Call him. Want the number?

(inaudible)

Officer: I don't need a search warrant.

Officer: I don't need a warrant for an 8 year old child ma'am so ...

(inaudible)

Officer: When you go to school … First of all you get your grade 3, then you can go to university and take your lawyer's degree.

(inaudible)

Female: Oh that's what you did eh.

Officer: Ya. You take your lawyer's degree and then you can come back and tell me I need a warrant.

Female: All right enough said.

J.W. All right, okay, thanks for illegally searching my house and kicking my door open.

(inaudible)

Officer: Go ahead. You know what, I'll do it for you. Would you like to see the boss? Would you like to see the boss? I'll call him. I'll call him.

(inaudible)

Officer: Oh ya. It's the white cop screwing the native again, right.

J.W. The what?

Officer: The white cop screwing the native again.

J.W. You're the one who uttered the words. Is that how it works.

Officer: Who's this little guy?

Officer: Mother of the year. Let me guess, mom had locked you out of the house too.

Officer: Just so you know (inaudible). I'm sure you'll get on your bike right now and go look for him.

J.W. Yeah, and you get on your invisible white horse officer.

Officer: And so that you know next time we have to come back and he's missing again, he's 8 years old and until he's 18 years old,

the door will get kicked in when it's in regards to a child. So you might as well just open the door and make it easy.

J.W. Why kick in the door when I tell you the truth he's not here.

Officer: Why do you make it so difficult?

J.W. I'm not making it difficult.

Officer: I need a search warrant to look for your kid?

J.W. Yeah. He's not here. Then do your job and go look for him.

Officer: He's not in trouble. We are concerned for his welfare. He's your son, why don't you go look for him.

J.W. Why? He's not in my care. (inaudible) Bye.

Officer: Mother of the year.

J.W. Bye. Have a good day. You think you're annoying me.

Officer: Oh, I know I am.

J.W. Bye. Bye. Have a good day.

[5] The audiotape and more particularly the identification of the voices captured on the audiotape were explored with J.W. on both direct and cross examination. It was J.W.'s evidence that Constable K.G. was the only officer speaking on the audiotape. She later agreed however that she told the Commission that Constable C.W. also spoke once, saying "Mother of the Year" and that some comments were made to her neighbour and not her, notably the comment about the level of education.

[6] J.W. also testified that in addition to the oral comments captured on audiotape, Constable K.G. had his finger pointed toward her head as if he were pulling the trigger when he said: "I'm annoying you, aren't I".

[7] According to J.W. the entire incident frightened her. She had heard stories like these about the police but had never believed them. To the contrary, she

always took their defence. She also commented that the remark “oh we are the police” made her feel powerless.

[8] On cross examination, it became clear that J.W. never told the Commission about any feelings of fear or about her prior trust in the police. She also admitted that she told the Commission that she did not allow the officers into her house because she had previous experiences with police abusing their authority and in fact this was the real reason she did not let them in this time.

[9] When cross examined about her interaction with the police at the front door, J.W. could not recall much; she did not know if she told them that her son had been at her house within the last hour. She did not know if she refused to tell them where he had gone, who he was with or what he was wearing. She also did not remember the officers asking for her name. She was however adamant that she did not say to them: “Fuck you, I’m not telling you any information because every time we tell you white cops something, you use it to screw us.”

[10] Finally, when cross examined about her reasons for recording the latter part of the interaction with police she first stated it was because the police were swearing at her. She then admitted that the real reason was because she thought the police needed a warrant and their entry into her house was illegal.

Constable K.G.’s testimony

[11] Constable K.G. testified that upon arriving at J.W.’s residence he told her why he was there and that he needed to come in the house to look for her missing son. When he asked J.W. if her son had been there earlier, she replied that he had but had since left. Constable K.G. then advised that he did not have a picture of her son and asked for her to tell him what he looked like. J.W. replied no. When he asked her if she could tell him what he was wearing, she once again replied no. The same response was given to other questions. By this time, he felt J.W. was not going to cooperate. He therefore asked for her name to which she replied: “Fuck you, I’m not giving you white cops any information. When you get information from us, you use it to screw us.” Constable K.G. found this response aggressive and borderline belligerent. He made up his mind that he needed to go inside the home as he believed J.W.’s son was there. He added: “There’s absolutely no reason in my mind, in my opinion, for a parent who’s just been notified that their child is missing and the police are actively searching for them, there is no other reason in my mind that you wouldn’t offer police entrance unless the child is in the home.”

[12] As J.W. had simply walked away from the door, Constable K.G. tugged on it until the plastic bag that was used as a makeshift lock came apart.

[13] Once inside, J.W. told Constable K.G. that he wasn't allowed to be in her home without a warrant. Constable K.G. advised J.W. that he did not need a warrant to look for an 8 year old child. Constable K.G. recalled J.W. uttering profanities at him though no specific examples were provided. Constable K.G. did not believe that he used any profanities but conceded he might have. He added that that may happen in situations where his level of frustration is elevated. He commented that in this particular situation, his level of frustration was elevated. He was concerned for the safety of the 8 year old child and had assumed the worst had happened to him. Constables K.G. and C.W. then began to search the house, Constable C.W. searching the downstairs and Constable K.G. searching the upstairs. Constable K.G. testified that his search of the upstairs was fruitless until he arrived at a door that appeared to be locked. He yelled to J.W. and asked who was in that room. J.W. responded: "Nobody's in there, and you can't go in there." This response led Constable K.G. to believe that there was something on the other side of the door that J.W. did not want him to see. He eventually got the door open only to find no one was in there.

[14] When Constable K.G. came back downstairs, he found J.W. still confrontational. To make matters worse, J.D, J.W.'s neighbour, was now in the residence. J.D. began speaking about requiring a search warrant and generally entering into the fray. She asked Constable K.G. how one goes about becoming a police officer, to which he responded about getting your grade 3.

[15] By this time Constable K.G.'s level of frustration continued to climb. In his words, not only did he have an uncooperative parent, he also had an uninformed neighbour.

[16] When asked specifically whether J.W. was showing any signs of fear, trembling or crying, Constable K.G. responded negatively. He indicated that: "Right from the get go she was difficult to deal with." She talked back to him on virtually everything that was said.

[17] In regards to some specific comments he made, Constable K.G. conceded that he might have called J.W. "Mother of the year". He also conceded that he did tell her something to the effect that it's the white cop screwing the natives again. He explained that just prior to making that statement J.W. had been accusing him of kicking her door in. In his mind, he could see exactly where this was going and thought that he needed to end that allegation right away. That was when he offered

to call his staff sergeant. Both J.W. and J.D. denied the offer indicating that it was okay. They knew how it worked. That was when he responded with the comment about white cops screwing the natives again, a paraphrase of what in his evidence J.W. had said to him at the front door.

[18] When questioned as to whether he ever gestured to J.W.'s head, Constable K.G. denied it adamantly. He added as well that for officer safety he would never get that close to an individual.

[19] When asked if he treated J.W. differently because she was a First Nations individual, Constable K.G. replied no. He stated that all of his comments to J.W. were sarcastic responses to her actions and comments. In cross examination, he testified that he did not find any of his comments derogatory. He maintained his evidence that his comments were simply sarcastic though he did concede that near the end, his tone became assertive.

Constable C.W.'s testimony

[20] Constable C.W. essentially confirmed Constable K.G.'s evidence and in particular in regards to J.W.'s lack of cooperation, her uttering words to the effect of "Fuck you, you white cops you ... use it to screw us natives" when asked for her name and her "baiting" and sarcastic tone. He testified that things got more heated as his and Constable K.G.'s stay progressed. He personally was also frustrated as they were there simply to find an 8 year old child, and were confronted with an "utterly surprising" response.

[21] In reflecting on the incident, Constable C.W. commented:

> " ... When we first got to the door and we were met by [J.W.] things started to escalate at that point, based on her language and the way she was speaking to us. When we came downstairs from searching, things picked up a little bit more, again with [J.W.] and with the other female that was present, and that's probably the time where the comments that were made by me were said ..." (page 79, lines 13 to 20)

[22] The comments made were specifically "Mother of the year." He added that part of the frustration also came from the fact that J.W. was not offering any assistance to find her child. Finally, he testified that J.W. never appeared to be frightened or intimidated in any way by his or Constable K.G.'s presence or actions that day.

III. THE LAW

Standard of Proof

[23] Section 29 of the Act provides that an officer commits a disciplinary default where he affects the complainant or any other person by means of an abuse of authority arising out of or in the execution of his duties. Section 29(a) provides several examples of abuse of authority of which (iii) using oppressive or abusive conduct or language and (vii) using differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*.

[24] Section 27(2) of the Act provides that for a Provincial Court Judge to find that an officer abused his authority as set out in section 29, she must be satisfied on clear and convincing evidence.

[25] The phrase "clear and convincing evidence" has been considered in several LERA decisions from the Provincial Court of Manitoba. In LERA complaint #3181, K.A.A. and Cst. S.D. and Cst. R.K., October 26, 2000, Judge Richard Chartier (as he was then) defined it as follows:

> "This is a high standard of proof because the consequences to the careers of the police officers resulting from an adverse decision are very serious. The evidence must be clear; it must be free from confusion. It must also be convincing which, when combined with the word "clear," in my view means that it must be compelling." (page 3)

[26] In LERA complaint #3358, S.W. and Cst. P.K., June 21, 1996, Judge S. Cohan accepted the definition of clear and convincing from the British Columbia Court of Appeal, in reference to the case of *College of Physicians and Surgeons of British Columbia v. J.C.*, 1992, W.W.R. 673:

> "... To discharge that burden a high standard of proof is called for going beyond the balance of probabilities and based on clear and convincing evidence. ...
>
> While the cases provide no clear rule, the most helpful term used in various judicial pronouncements on this subject seems to me to be the word "convincing". To be "convinced" means more than merely to be persuaded. I think the test to be applied in the present case is whether, on the evidence before it, the committee could properly have been convinced ..." (page 11)

[27] In LERA complaint #6100, A.C. and Cst. G.S., February 20, 2007, Judge Joyal (as he was then) indicated the following:

> "46. While the standard of proof is high – greater than proof on the balance of probabilities – it does not require proof beyond a reasonable doubt. Proceedings under section 29 of the Act, have sometimes been described as "civil proceedings" (see Law Enforcement Review Act Complaint #6180, August 18, 2006) after which comment is made about an "elevated" standard of proof (elevated from the traditional balance of probabilities). In my view, it is easier to characterize these proceedings as administrative proceedings. As such, they contain a unique standard of proof (rooted in the statute) which cannot be confused nor need it be reconciled with anything approaching proof on a balance of probabilities.
>
> 47. In her attempts to position the standard of proof as somewhere between proof on a balance of probabilities and proof beyond a reasonable doubt, Giesbrecht P.J. identifies "clear and convincing" proof as requiring the presiding judge to be "convinced" and not merely "persuaded". (see *R.J.M. v. Sergeant P. and Constable T.* (February 24, 2004)."

[28] Finally, in LERA complaint #2004/192 A.R. and Cst. K.S., Judge Moar after reviewing the applicable case law stated:

> "72. Based on this review it is apparent that the standard goes beyond the normal civil standard of proof on a balance of probabilities but does not extend to that of proof beyond a reasonable doubt as in a criminal case.
>
> 73. A court must have credible evidence that goes beyond merely being persuasive but is all of clear, free from confusion, convincing and compelling as was concluded by my colleague Lismer P. of the unreported case of *A.P. v. Constable V.* dated July 12, 2005. Lismer P. stated at para. 47:
>
> > In other words the case for the complainant [A.P.] must be proven by a fair and reasonable preponderance of credible evidence that is clear, free from confusion, convincing and compelling.
>
> 74. It is only with this type of evidence that a court can correctly, in my view, balance the need to ensure members of the public are treated fairly and appropriately by the various police services while also ensuring that an officer's career is not unduly hampered."

Abuse of Authority

[29] Although section 29 of the Act stipulates that an abuse of authority constitutes a disciplinary default, the term "abuse of authority" is not defined. Non exhaustive examples are provided, but once again, these examples are not defined. Judges have often grappled with the meaning of this particular section and a review of the case law suggests that judges proceed on a case by case analysis. For example in LERA complaint # 3573, Mr. G and Cst. G and Cst. B, a decision dated August 14, 2000, Judge Wyant noted:

> "I find that the context in the ***Law Enforcement Review Act***, in which the word "including" was used, was not meant to be restrictive in any fashion. What may be deemed to be an "abusive (*sic*) of authority" can be determined on a case by case basis, the particulars of which can be itemized and therefore answerable by a respondent."

[30] There has also been a recognition that even if the conduct complained of is listed in section 29(a) that does not mean that it gives rise to an automatic finding of an abuse of authority. As stated by Judge Joyal in LERA complaint #6100 referred to above:

> "[51] It is only the cases where a police officer's behaviour or conduct can be concluded to be abusive of his authority that are sanctionable pursuant to section 29(a). Default is not to be found for absolutely any and all manifestations of the impunable behaviour set out in section 29(a)(i)-(vii). Each case will depend upon its own facts."

[31] There have however been some attempts to provide guidance for a measure against which specific conduct can be compared to assist in determining whether that conduct rises to a level of abuse of authority. In S.W. and P.K. LERA complaint #3358 referred to above, Judge Cohan stated:

> "The second alleged disciplinary default was that of oppressive conduct on the part of the respondent. The term "oppressive conduct" has been considered in relation to dealings between shareholders of corporations. The Canadian courts have adopted the meaning given to that term in Scottish Co-op Wholesale Soc. Ltd. v. Meyer, 1959 AC 324 @ 342, a decision of the House of Lords.
>
> > "Oppressive in this context means conduct that is burdensome, harsh or wrongful or which lacks probity or fair dealing."
>
> In Nystad v. Harcrest Apartments Ltd. 1986 3 BCLR 2d 39 Chief Justice McEachern equates oppressive conduct with bad faith." (page 14)

[32] In LERA complaint #6100 referred to above, Judge Joyal noted the following:

> "[52] On a contextual reading of the Act and the consideration of its purposes, one can conclude that an "abuse of authority" connotes conduct of an ***exploitative character***. The exploitative potential flows from an officer's position of authority which permits the impugned conduct to have an ***inappropriately and unjustifiably controlling, intimidating or inhibiting effect*** on a given complainant in the context of a particular fact situation. Police conduct which can be properly found as an "abuse of authority" is that exploitative conduct which, even after an examination of the factual context of a given case, cannot be viewed as consistent with a reasonable police officer's good faith intention to lawfully

perform his duties and uphold the public trust. Judicial decisions such as the one in the case at bar, continue to develop a set of reference points and criteria by which an alleged abuse of authority can be evaluated. The development of those reference points and criteria must find a way to balance the need to hold police officers to account, while not defining "abuse of authority" too broadly or vaguely.

[53] In continuing to confirm the expectation of appropriate and justifiable police conduct and in giving more clear meaning to the idea of police "abuse of authority", this Court's future decisions (while not foreclosing the possibility in appropriate cases -- see LERA Complaint #6180, August 18, 2006) must take care to not encourage hearings pursuant to section 29(a) for every example of sub-par police behaviour. The developing definition of an "abuse of authority" must ensure, for example, that the LERA forum not become a means for attacking all police conduct which may have been the subject of earlier judicial determination respecting such matters as Charter breaches and the consequent exclusion of evidence. (see for example, Swail P.J.'s warning about the potential for "disciplinary chill" in F.D. v. Cst E.D. and Cst. M.C., December 12, 2005, paras. 83-85)

[54] The above warning should not be seen to suggest that a police officer's good faith preempts a finding of an abuse of authority. In a LERA proceeding, good faith in the course of police investigative conduct will not always or necessarily be determinative. Certain types of conduct, depending upon its seriousness, will vitiate a police officer's good intentions and/or good faith. In examining the seriousness of the impugned conduct pursuant to a proceeding under section 29(a), it might be useful to invoke (as did not colleague Smith P.J. in Complaint #6180) the plain dictionary meaning of "abusive". In paragraph 118 of her judgment, Smith P.J. noted that the Random House Dictionary (2nd edition) identifies abusive as meaning "treating badly or injuriously, mistreating, especially physically".

[55] The notion of "treatment" in the above definition (with the accompanying qualifiers: badly, injuriously, physically, etc.) provides a useful reference point for evaluating the reasonableness of a police officer's conduct. It will also assist in determining whether the good faith of a police officer, is nonetheless outweighed by the seriousness of the impugned conduct.

[56] As always, determining whether the impugned police conduct involves treatment of the complainant which rises to the level of "mistreatment", will depend upon the situation and context. Objectively identifiable "mistreatment" at the hands of a police officer – such treatment will probably be injurious physically or otherwise – is, by definition, an abuse of authority.

[57] Even accepting that an officer's good faith is not determinative, in some circumstances, it may be impossible to find good faith or good intentions on the part of the police officer. In those cases, the officer's conduct or treatment of a given complainant may be more easy to condemn. In *Winnipeg City Assessor v.*

> *Licharson*, Manitoba Court of Appeal 2005 Carswell Man. 311, Huband J.A., defined abuse of authority as involving "bad faith" or "improper motive". Although that definition arises in a case involving a municipal assessor, it nonetheless deals with the relationship of public trust involving a person in a position of authority." [Emphasis mine]

[33] In summary, an abuse of authority has been defined by the courts as conduct that is:

- Burdensome, harsh, or wrongful or which lacks probity or fair dealing;
- Indicative of lack of fair dealing or bad faith or improper motive;
- Treating badly or injuriously; and
- Exploitative in the sense that it is inappropriate and unjustifiable, controlling, intimidating or inhibiting.

[34] That said, conduct cannot be considered in a vacuum; the conduct complained of must be examined in the context of the circumstances of the particular case. And while, "... we expect police officers to restrain themselves and act professionally, even when provoked" (LERA complaint #2006-362 in A.D. and Sergeant W.T and Constable M.D. para. [12]), courts should be mindful not to hold police officers to too high of a standard. As stated by Justice Menzies in Sergeant S.B. and Constable B.S. and S.H., a decision of May 12, 2008:

> "Police officers work in high pressure situations with potentially dangerous work and much of the time the people they are dealing with do not want to be dealt with by police officers. And to make a finding that merely being discourteous in some way or another should constitute disciplinary default leaves officers at a standard that cannot be met."

[35] Thus, by way of an example, the following were considered not to be an abuse of authority:

- A frustrated exchange of words with a complainant in a confrontational tone, though considered not to constitute the ideal courtesy and civility to which police officers ought to aspire, was found not to constitute an abuse of authority in the circumstances of that particular case.
- Swearing in the context of a physical confrontation with an offender was considered to be understandable in the exigencies of the situation and excusable.

IV. ANALYSIS

[36] In the case before me, the complaint is that Constable K.G. abused his authority by both using oppressive or abusive conduct or language, and by treating J.W. differently because of her First Nations status.

[37] The evidence of Constable K.G.'s conduct on October 1, 2005 comes from J.W., Constable K.G. and Constable C.W. as well as the audiotape. In listening to the audiotape, it is apparent that there are four different voices. Given that oftentimes the individuals speak over one another and that the comments are not always clear, oral evidence as to who said what when is crucial. The same holds true with respect to what transpired at the front door and whether there were any hand gestures. For this reason, it is important to assess the witnesses' credibility.

[38] In assessing J.W.'s credibility on this point, I note that there were several points in her cross examination which were not forthright. She attempted on several occasions to skirt around several inconsistencies in her evidence. For example, after stating quite clearly that an individual from the Aboriginal Council of Winnipeg and employees of the Commission had warned her about the police breaking into her home to steal the audiotape, she attempted to recast that evidence when confronted with it. This was also the case when confronted with her direct evidence that she had always held the police in high regard prior to this incident and had in fact always stood up for them. I also noted that although J.W. stated that she was very frightened by the incident with the police officers and was trembling and in fact became quite shook up in direct examination when explaining this, neither police officer noted this in their dealings with J.W. I would further add that the tone of J.W.'s voice on the audiotape as well as her replies to the officers are not indicative of someone who is frightened. Rather, they are indicative of someone who is confrontational and trying to get a "rise" out of them.

[39] I would also note that with respect to what transpired at the front door prior to the audiotape being played, J.W. testified that the officers were belligerent and swearing at her. She also denied having made any comment about the cops trying to use information against First Nations people. She pointed to the fact that this was the reason she started the audiotape; it was because they had been swearing at her. In listening to the audiotape, it is clear that there were no swear words uttered during the portion that was captured on audiotape. I find it unlikely that the police officers would have stopped swearing, if they had been so inclined in the first place, given the nature and tone of the interaction captured on audiotape. I would also note that J.W.'s first comments captured on audiotape are with respect to the

police entering her house illegally without a search warrant. She makes this same comment on several occasions. I also note that during her cross examination she conceded that that was her real complaint with Constables K.G. and C.W. – the fact that they entered her home without a search warrant. There is no indication that she put on the audiotape because she was either frightened or that the officers had been swearing or using abusive language to her. Finally, she also admitted that although she stated on the audiotape that the officers "kicked in" her door, that never in fact happened.

[40] In reviewing Constables C.W. and K.G.'s evidence, I found that their evidence was presented in a forthright and consistent manner. Both officers also conceded points of evidence in their behaviour that could portray them in a negative light.

[41] For the foregoing reasons, where there is a difference in J.W.'s and Constables K.G. and C.W.'s evidence, I prefer the latter.

[42] What that means is that I accept that when Constables C.W. and K.G. came to the door of J.W.'s residence, she denied them entry and refused to provide any information either identifying the whereabouts or identity of her son or herself, stating that the officers would just use it to "screw" her. I also accept that when Constables C.W. and K.G. entered her residence, she swore at them. I also accept that Constable K.G. did not put his finger to J.W.'s head as if he was going to shoot her. I would note that in addition to preferring the Constables' evidence, the audiotape makes it quite clear that at this stage of the interaction, Constable K.G.'s voice is quite far away from J.W. As the conversation continues, his voice gets further and further away. It is therefore unbelievable that Constable K.G. would have been proximate enough to J.W. to have acted in the way that she alleges he did.

[43] That leaves me with the comments that Constable K.G. acknowledges he uttered: Mother of the year; White cop screwing the Native; Get on your bike; Oh yeah we are the police.

[44] As indicated above, there is an expectation that police officers will exercise restraint and act in a professional manner at all times. Other courts and this Court in particular acknowledge however that although this might be the standard to which all police officers should aspire, some situations make it difficult for police officers to remain professional. Police officers are confronted on a daily basis with individuals who are aggressive and disrespectful. They are sworn at, spit at, and

treated contemptuously. All of this, while simply trying to do their job of protecting the public.

[45] In this case, Constables C.W. and K.G. had been called to find a missing 8 year old boy. Fears for the child's safety given his young age and the area of the city in which he went missing would obviously cause concern for Constables C.W. and K.G. The response by J.W. as to the disappearance of her son was surprising. More importantly however, it was unhelpful and a hindrance to the investigation. Time was ticking and J.W.'s behaviour was impeding the investigation. This stress of time going by and the unknown whereabouts of an 8 year old boy in conjunction with belligerent conduct, understandably caused Constable K.G.'s patience to boil over. The comments he uttered and the tone he used are indicative of impatience, not of any misuse of his authority as a peace officer. In these circumstances, I do not find any of his comments to constitute an abuse of authority either by being oppressive or abusive. Nor is there any evidence of any differential treatment of J.W. due to her First Nation heritage as set out in subsection 9(2) *The Human Rights Code*. The comment referring to "Natives" was a reiteration of what J.W. had said at the door. It was also clear on the evidence before me that Constable K.G. would have acted the same regardless of J.W.'s heritage.

[46] For all of these reasons, I find that Constable K.G.'s comments do not constitute a disciplinary default within the meaning of section 29 of the Act.

[47] Accordingly, the complaint is dismissed. A publication ban on the respondent's name shall continue in accordance with section 25(b) of the Act.

"Original signed by:"

L. MARTIN, P.J.