

IN THE MATTER OF:

**Law Enforcement Review Act
Complaint #3601**

AND IN THE MATTER OF:

BETWEEN:

H.E.

**Complainant,
(In Person and unrep-
resented by counsel)**

- and -

CONSTABLE B.G.S.

**Respondent,
(In Person and unrep-
resented by counsel)**

THE HONOURABLE ASSOCIATE CHIEF JUDGE BRUCE MILLER

I. THE ISSUE

The Commissioner of the Law Enforcement Review Agency has referred this matter to a Provincial Judge for a hearing on the merits of the complaint, pursuant to section 17(1)(b) of the **Law Enforcement Review Act** R.S.M. 1987, C.L75 (hereinafter referred to as "the L.E.R.A."). That section states:

s. 17(1) The Commissioner shall refer a complaint to a provincial judge for a hearing on the merits of the complaint when

(b) disposition of the complaint within the terms of section 15 or 16 is not possible.

The respondent, Constable B.G.S. is alleged to have committed the following disciplinary default as defined under s. 29 of "the L.E.R.A.":

On or about September 17, 1998 abuse his authority by being discourteous or uncivil towards the complainant H E, contrary to s. 29(a)(iv) of **The Law Enforcement Review Act**.

II. THE FACTS:

The matter proceeded to hearing before me in the course of which I received the sworn evidence of the complainant, Mrs. E. and her son, J. Thereafter, the respondent, Constable S. similarly testified under oath.

Mrs. E. described the events of September 17, 1998 resulting in her attendance with her son, J. to the Winnipeg Police Service Community Police Office at Main Street and Aberdeen Avenue in the City of Winnipeg. J.E. had allegedly been assaulted earlier in the day, at school, by fellow students and Mrs. E. wished to report the matter to police. It was her intention and desire that an investigation be undertaken by those authorities to identify the persons responsible and to have appropriate action taken against them. Upon arrival at the Community Police Office in the late afternoon/early evening of that day, they were advised to take a seat and a police officer

would be with them shortly. In due course, Constable S, attended upon them, introduced himself and ushered them into the back office area. Mrs. E. who acknowledged her upset and concern relative to the well-being of her son, advised that she eventually began to describe to Constable S. what had happened to J. ; when Constable S. angrily and in a raised tone, advised her to "shut up - I wasn't talking to you". Her reaction was one of complete shock and embarrassment for having been addressed and confronted in such a fashion in the presence of her fourteen year old son. Mrs. E. described that there was at least one other person present within the office area who also appeared to be somewhat taken aback by the outburst. Shortly after this occurred, Mrs. E. and J. left the Community Police Office and she eventually determined that this matter should be brought to the attention of the appropriate authorities.

J.E., fourteen years of age at the time of the alleged events and sixteen years of age at the time of giving his evidence, effectively confirmed the details and description of same as provided by his mother. He recalled the officer raising his voice in telling his mother to "shut up" and in response to a question put to him by me, recalled (apologetically to his mother) that he was surprised his mother did not respond to Constable S, in kind and in similar tone or at all.

At the conclusion of the evidence in support of the case for the complainant, Constable S. testified. He recalled the day in question and his contact with Mrs. E, and her son. He advised that he was in a normal mood, that he was not angry and he approached Mrs. E. and her son in the office to introduce himself. Constable S. testified that Mrs. E. was very upset over the assault on her son and she wanted something done about it immediately. It appeared to him that J. was somewhat hesitant to speak about the matter and that Mrs. E. was taking the lead. At no time did he tell her to "shut up" or otherwise treat Mrs. E. or J. in a discourteous or uncivil manner.

III. THE STANDARD OF PROOF TO BE APPLIED:

In a hearing such as this, s. 27(2) of "the L.E.R.A." applies.

It states:

27(2) The provincial judge hearing the matter shall dismiss a complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has committed the disciplinary default.

As these proceedings are civil in nature, the standard of proof which the complainant must meet is that of a balance of probabilities. The requirement of "clear and convincing evidence" speaks to the quality of the evidence necessary to meet the standard of proof on a balance of probabilities. The phrase "clear and convincing evidence"

has been the subject of judicial review and consideration. See, for example, **Huard v. Romualdi** (1993) 1 P.L.R. 217. It means that the proof must be clear and convincing and based on cogent evidence because the consequences to a police officer's career flowing from an adverse decision can be very serious.

I am, indeed, mindful of that guidance and instruction.

IV. CONCLUSIONS:

If I were satisfied on clear and convincing evidence that Constable S. said to Mrs. E. what he is alleged to have said, in the tone and in the circumstances described, I would also be satisfied that those actions would constitute a disciplinary default on the basis of his being "discourteous or uncivil".

I have had the benefit of the opportunity to listen to and to observe the witnesses in the giving of their viva voce testimony.

While the parties do not disagree in respect of a number of the details surrounding their interaction on September 11, 1998, they most certainly do in relation to the foundation of the complaint itself. Indeed, Constable S. steadfastly denies it happened while Mrs. E. and her son maintain that it did.

In assessing the evidence presented, I was favourably impressed by the testimony of J.E. Combined with his relatively youthful innocence was a forthrightness and candor which I appreciated. I accept his description of the events in question.

In all of the circumstances, I am satisfied that there is present, clear and convincing evidence which meets the standard of proof on a balance of probabilities, that Constable B.G.S. committed a disciplinary default in abusing his authority by being discourteous or uncivil towards the complainant, H.E.

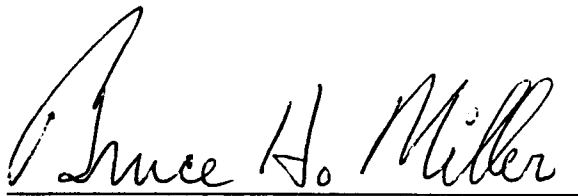
V. THE NEXT STEP:

In light of my finding of a disciplinary default, pursuant to s. 28(1) of "the L.E.R.A.", I am obliged to hear the submissions of the parties and details of the service record of Constable S. prior to determining the penalty to be imposed. For the benefit of the parties, section 28(1) states:

28(1) Where the respondent admits having committed or is found to have committed a disciplinary default, the provincial judge hearing the matter shall hear the submissions of the parties and details of the service record of the respondent; and he or she shall order one or more of the penalties set out in s. 30 for each disciplinary default which the respondent has committed.

Arrangements will be made, through my office, for the parties to appear before me and the appropriate information to be provided.

Furthermore, pursuant to s. 27(1) of "the L.E.R.A.", copies of this decision will be delivered to Mrs. H.E. and Constable B.G.S. as well as the Chief of the Winnipeg Police Service and Commissioner of the Law Enforcement Review Agency.


Bruce H. Miller, A.C.P.J.