IN THE MATTER OF: ***The Law Enforcement Review Act***
Complaint #3771

AND IN THE MATTER OF: An Application pursuant to s.13 of ***The Law Enforcement Review Act*** R.S.M. 1987, c.L75

B E T W E E N:

A. P., Complainant	)	Mr. John Michaels, Counsel for the complainant
- and -	)	
Constable G. V. Respondent	)	Messrs. Paul McKenna and Josh Weinstein Counsel for the Respondent
	)	Hearing dates: April 8 & 12, 2005
	)	Decision date: July 12th, 2005

Note: These reasons are subject to a ban on publication of the Respondents' names pursuant to s.25.

T. J. LISMER

INTRODUCTION

[1] Thursday evening August 6th, 1998 is the date of the incident leading to the complaint and this public hearing under section 24 of ***The Law Enforcement Review Act*** (hereinafter referred to as ***L.E.R.A***.) on the merits of the complaint against Constable G. V., a member of the Winnipeg Police Services.

[2] Notice of Alleged Disciplinary Default and the referral to a Provincial Court Judge under ***The Law Enforcement Review Act***, dated the 19th day of July, 2002 (Exhibit 4),

> "for a hearing to determine the merits of the complaint which alleges the commission of a certain disciplinary default, as defined under Section 29 of *The Law Enforcement Review Act*, . . . by the respondent Constable G. V., namely that he did:
>
> 1. Abuse his authority by making a false statement, contrary to section 29(b) of *The Law Enforcement Review Act*.

[3] There are several reasons for this inordinate delay from the original incident to this hearing. Initially there was a seven month delay in serving the complainant with the 90-day suspension of his driver's licence after he was formally charged on March 24th, 1999 with impaired driving and failing the breathalyzer test. Mr. P. with his then counsel, challenged the suspension before the Motor Vehicle Branch – with negative results. This was followed by a Motion before Justice Kennedy in the Court of Queen's Bench, who reversed the licence suspension on August 13th, 2001.

[4] Finally, after Mr. John Michaels was appointed as the complainant's new counsel, April 8th, 2005 was the earliest date suitable to all parties.

[5] Submissions were completed on April 12th, 2005.

[6] Under section 27(1) of ***L.E.R.A.,*** the Provincial Judge must as soon as practicable after the conclusion of the hearing, decide whether the respondent has committed a disciplinary default and shall deliver his or her decision in writing (a) to the parties, and (b) where the respondent's Chief of Police and the Commissioner are not parties, to the respondent's Chief of Police and the Commissioner.

[7] Section 27(2) mandates that the Provincial Judge hearing the matter shall dismiss a complainant in respect of an alleged disciplinary default unless satisfied on clear and convincing evidence that the respondent has committed the disciplinary default.

[8] These are the written reasons of my decision on the merits of the complaint.

THE EVIDENCE AND THE ISSUES

[9] The Court Assistance Summary (Exhibit 1) and the Narrative (Exhibit 2) prepared by Constable V., together with *viva voce* testimony supplementing these reports, best described the sequence of events leading to the complaint of a disciplinary default. The *viva voce* testimony will be discussed later in these reasons.

[10] It is the Court Assistance Summary (Exhibit 1) that contains the impugned sentence that the complainant alleges falsely suggests that Constable V. actually directly observed the complainant getting out of his car, whereas, as the complainant insists, he arrived home 20 minutes prior to the police arrival at his residence and that in that 20-minute interval, and only after he drove his motor vehicle and parked it at his residence, that he consumed a scotch and two and one half beer at his home.

[11] Following are the exact contents of the Court Assistance Summary:

> Accused Name: P., A. G.
>
> On Thursday, August 6, 1998 at approximately 10:41 p.m. the accused Mr. P. was operating his 1990 Ford Ranger Black pickup truck, bearing Manitoba Licence XXXXXX, eastbound on Highway Number One at the Perimeter Highway underpass. The accused was driving in an intoxicated state.
>
> Members of the Winnipeg Police Service, acting on the information provided, attended to the address of the registered owner, this being at XXX Ebby Street.
>
> The registered owner/Mr. P. was located after just getting out of his vehicle and learning he was the driver. The accused was observed to be unsteady on his feet. When asked for his identification, he was observed to have difficulty in producing his wallet and identification. The accused was observed to have a mild odor of liquor on his breath.
>
> At apprx. 11:20 p.m., the accused was placed under arrest for Driving Impaired. The accused was advised of his rights to legal counsel ad the police caution, both of which he related he understood. The accused declined to contact legal counsel. The accused was read the Breath Demand and agreed to provide samples of his breath to be

> analyzed. The accused was conveyed to the District 2 Police Station, where he provided two samples of his breath resulting in readings of:
>
> 1st Test @ 12:17 a.m. @ 110mg%
>
> 2nd Test @ 12:34 a.m. @ 120 mg%
>
> The accused was released for summons

[12] The officer testified that the Court Assistance Summary, according to long established procedure, is a summary of the facts and investigation to that point.

[13] A more detailed narrative report was prepared by him (Exhibit 2) that day with some additions later to cover the officer's attendance on the complainant on March 21st, 1999 when serving him with a notice of suspension.

[14] The following is the exact contacts of this narrative:

> NARRATIVE
>
> . . . . .
> ACCUSED: P., A. G., 33 Years (1966 01/08)
>
> CHARGE: DRIVER IMPAIRED, DRIVE OVER 80 MGMS
>
> On Thrs. 98 08 06 , at apprx. 22:47 hrs., this crew was dispatched to attend to the Perimeter 100 Hwy. and Portage Avenue, in regards to a report called into WPS dispatch by Headingley RCMP, of a possible impaired driver.
>
> Info. received this occurred at apprx. 22:41 hrs., and the suspect vehicle was bearing M.L.#XXXXXX, a black Ford Ranger pick-up truck, with a male driver, no description.
>
> CPIC checks provided the R.O. of the suspect vehicle as being the a/n accused/Mr. P.
>
> Upon arriving, at apprx. 22:48 hrs., this crew checked eastbound Portage Ave. from Cavalier Dr. and were met with negative results. This crew proceeded to the R.O.'s address at XXX Ebby St., arriving at apprx. 23:05 hrs.
>
> This crew checked the side street, this being Wentworth St., the front street, but were met with negative results. This crew proceeded around the block to the back lane, but again were met with negative results. As this

crew was exiting the rear lane of XXX Ebby St., onto Wentworth, the suspect vehicle was found parked directly across the street from the side door of the suspect's address. The suspect vehicle was not there when this crew first arrived.

The vehicle's hood was still warm to the touch. This crew knocked on the side door of the suspect's address, and a male exited. This male was verbally identified as the R.O., and this crew also learned that he had just driven home from working in Ellie, MB.

This make was observed to be intoxicated, with the small of liquor emanating from his breath, and that he had slurred his speech when he spoke. This male was also observed to be unsteady on his feet, as he chased after his cat on the front lawn.

The male was advised of the reason for the police being in attendance, and he responded that he wasn't drinking and driving, that he just had a scotch and 2 and ½ beers when he got home 20 minutes prior to police arriving.

This male was asked to accompany this crew to the c.c., and he complied. This writer contacted dispatch and confirmed with them that Headingley RCMP was passed by the suspect vehicle and that they had called it in.

At the c.c., male/Mr. P. was placed under arrest by the writer, at apprx. 23:20 hrs. He was advised of his rights to legal counsel and the police caution, to all of which he answered indicating he understood. When asked if he wished to call legal counsel, Mr. P. declined.

The accused was read the breath demand, and he indicated he would provide police with samples of his breath for analysis. The accused's house side door was locked up as per his request, and he was conveyed to the D2 station.

Arriving at apprx. 23:39 hrs., the accused was viewed by Sgt. P., and escorted to IR#1, where he was searched, and where a PLS was completed. The accused's background info. was also obtained at this time, after which, he was escorted by the writer to the Breathalyzer Room, where Cst. K.D. conducted the tests.

The tests resulted in readings of;

1. 00:12 hrs.: 110 mg% 2. 00:34 hrs.: 120mg%

The accused was returned to IR#1 AT APPRX. 00:45 hrs., where the Q.&A were completed. The accused was also advised of the second charge of Driver Over .08, and asked if he wished to contact legal counsel,

> and the accused declined. The accused was left alone without requests or complaints.
>
> This writer contacted Headingley RCMP, and it was learned that a manner of driving complaint was reported to them by a civilian, and that they did not obtain the complainant's particulars.
>
> Sgt. P. was advised of the incident, and he advised to release the accused for summons on a later date.
>
> At apprx. 0052 hrs., the accused was conveyed to XXX Ebby St. where he was released.
>
> This writer later received a note from Div. 26 advising to serve the accused with a Notice of Suspension.
>
> This writer made several attempts to locate the accused, but were met with negative results as he worked out of the city.
>
> This writer later received a telephone call from the accused wondering why the police were at his address, looking for him. This writer advised him of the suspension, and several appointments were set, but were canceled by the accused as our schedule did not align.
>
> On Sun. 99 03 21 this writer attended the accused's address as per appointment, and located him at home. The accused was issued the Notice of Suspension. He inquired if suspending his license was necessary, ad that this would affect his livelihood.
>
> The accused was provided with a temporary license from 99 03 21 to 99 03 28, at which time his 90 day suspension will commence.
>
> This concludes this writer's involvement at this time.

[15] Specifically, the complainant takes issue with the statements in the Court Assistance Summary (Exhibit 1) that:

> The accused was driving in an intoxicated state . . .
> and
> The registered owner/Mr. P. was located after just getting out of his vehicle and learning he was the driver.

The complainant denies that he was driving in an intoxicated state and maintains that the statements are false because it suggests that Constable V.

observed him driving in an intoxicated state, whereas, according to all the evidence, the Constable first encountered the complainant at XXX Ebby Street, the complainant's home. The complainant submits that this false statement continues in the suggestion that he was seen by the officer in "just getting out of his car and learning he was the driver". The complainant submits that the officer falsely intended to convey that he had not merely observed him alighting from the car but that he was alighting from the driver's side as its sole occupant and driver.

[16] Constable V. testified that his narrative (Exhibit 2), the amplification of the Court Assistance Summary (Exhibit 1), makes it clear that the truck was first observed parked by the accused residence after the officer and his partner circled the block in the vicinity when, within one minute on the first passing by of the accused residence there was no vehicle there. The officers immediately attended to the door of the accused's residence, noting along the way that the hood of the Ford Ranger automobile was still hot. The complainant met the officers at his front door and in conversation, informed them that he had driven the vehicle from his employment in Elie, Manitoba to his residence some 20 minutes earlier during which time he consumed one Scotch and 2 and ½ beer. Constable V. did not believe the 20-minute story and reasonably concluded on observing the complainant in an intoxicated state at the door of his residence that the driving done by the complainant within the one minute or so period was done in an intoxicated state.

[17] The constable explained that he used the word "located" the complainant at his residence door after just getting out of his vehicle and learning from the complainant that he was the driver. The constable pointed out that the statement on its face clearly conveys that he did not see the accused driving when he used the word "learning he was the driver", and that he learned this from the complainant himself.

[18] The complainant expressed his belief that the false statements contained in this Court Summary as worded, lead the Registrar of Motor Vehicles to uphold the 3-month suspension of his driver's licence.

[19] Even though the breathalyzer tests show that the complainant exceeded 80mg% and Constable V. formed the opinion that the ability of the accused to drive a motor vehicle was impaired by alcohol, Constable V. was advised by his Sergeant to release the complainant without any charges but that

he may be summoned later. Constable V. explained that the complainant was not suspended then because he had learned that the erratic driving particulars were called in by a civilian and that the R.C.M.P. did not actually see him driving; originally Constable V. believed that it was the R.C.M.P. that witnessed the Mr. P. vehicle at about the time of the call to the police services of a suspicious driver.

[20] In reviewing the evidence, I note that it is theoretically possibly that Mr. P. was in his house about 20 minutes before the police arrived at his door, as submitted by his counsel. The R.C.M.P. phoned into the Winnipeg Police Department about a possible impaired driver of a suspect vehicle bearing Manitoba licence plate number XXXXXX. They were dispatched at approximately 22:47 hours to attend Perimeter 100 west and Portage Avenue. They arrived at Portage and Cavalier in the vicinity of Westwood Drive and began checking east bound traffic at 22:48, but were met with negative results for about 2 minutes whereupon they then proceeded directly to XXX Ebby Street.

[21] There is no evidence of the exact time of observation by the civilian of the erratic driver, but it is clear that Constable V. and his then partner believed that this driver was then driving on Portage Avenue eastward. The officers arrived at XXX Ebby Street at approximately 23:05. It is possible that the complainant may have already been at his home at XXX Ebby Street when the police were still checking east bound traffic at Cavalier Avenue. It is possible that after the complainant arrived at his residence someone else drove his Ford Ranger vehicle and parked it at the accused's residence by the time the officers had come around the block and had first observed that vehicle.

[22] While all this may be theoretically possible, the fact is that Mr. P. did not include in his conversation with the police when they attended at his door that some person other than himself drove his vehicle just prior to the police arrival at his door. He simply stated that he was the one who drove the vehicle from Elie to his residence and took issue only with the fact that he did not park that vehicle there one minute before the police arrival, but that he was in his residence for 20 minutes.

[23] Constables V. and M. in their testimony described that when they first passed by the accused residence they drove at a crawling speed and that

definitely there was no vehicle there, but that it was only after going around the block within a one minute period that the vehicle was parked there.

[24] Mr. P., when confronted about the observed erratic driving, acknowledged that at one point on his way from Elie his tires went off the main highway and touched, or as he put it "dusted the shoulder". He does not recall the exact time of his departure from work or arrival at his home. He testified that he was tired, sweaty and on this 30 degree day he was dry and thirsty, and drank one Scotch free poured and was on his third beer when the police arrived. He said that he was at his house about 20 minutes and was in his front yard trying to catch his cat that ran out. He testified that the police questioned him aggressively and repeatedly about his drinking and driving and called him a liar when he insisted that he drank only after reaching his home.

[25] He testified that when he appeared before the Registrar of Motor Vehicles he was shocked to see the Police Assistance Report (Exhibit 1), wherein the officer stated that he saw him get out of his vehicle. When Exhibit 1 was shown to him at the hearing and he was asked where he sees in that report that the officer stated that he actually saw him get out of the vehicle, Mr. P. acknowledged that no where in Exhibit 1 is there the statement that the officer actually saw him alight from the vehicle.

[26] In the police check list when readying the complainant for the breathalyzer, the complainant responded that he had his last drink 10 seconds before the police arrival even though the complainant stated that he was in the front yard for about 2 minutes chasing his cats before the police arrival and he was not at his door to meet the police there.

[27] Constable Thomas M. testified that when Mr. P. came to the door of his residence there was no drink in his hand. He was sure that the complainant had just exited the vehicle after learning that he was the driver of it, because the time it took for the officers to travel around the block was less than one minute. Constable M. testified that he was 100% certain that the vehicle was not parked there when they first passed the residence at a crawling speed, but it was there within a minute later. Constable M. confirmed that he called the complainant a liar because he did not believe his story of being in his house 20 minutes before the police arrival there.

[28] Constable V. testified that when Mr. P. said that he was in his house for 15 to 20 minutes before the police arrived there, he knew that he was untruthful. He did not see him with a drink in hand. He said that he did not see Mr. P. get out of his vehicle, and therefore did not put that into Exhibit 1; that he was not trying to mislead anyone and the narrative gave all the details, that when he touched the hood of the complainant's vehicle, it was hot. He explained that the summary or occurrence report (Exhibit 1) is part of the investigation, a summary of what occurred to that point, and that the narrative (Exhibit 2) outlines available evidence with accuracy and detail. He testified that he did not intend to mislead or deceive anyone and that the summary (Exhibit 1) is truthful as it stands.

[29] The officers had no direct evidence that the accused drove his vehicle to his residence that evening. They did not see him drive, nor did any witness to their knowledge directly observe and identify the accused as the driver of his motor vehicle up to within one minute of the police arrival. The evidence Constable V. had on this was entirely circumstantial. He had the clear acknowledgement from the complainant himself that he had driven that motor vehicle from Elie to that residence. While Mr. P. insisted that he had parked that vehicle some 20 minutes prior to the police arrival, he did not offer any information to the police that anyone else drove that vehicle within that 20-minute interval during which, as he asserted, he was at his residence prior to the police arrival. At any time in his encounter with the police officers especially during the aggressive questioning by Constables V. and M. about his drinking and driving, did he point to any person other than himself who might have driven that vehicle within that 20-minute period. Nor did he say so on this in his testimony at the hearing before me.

[30] On the information in the possession of Constables V. and M. at the time, they had reasonable and probable grounds to conclude that it was the complainant who drove that vehicle to that residence no more than one minute prior to their arrival there, and that this circumstantial evidence of the complainant offers no other rational inference but that he was that driver at that time.

MAKING A FALSE STATEMENT – AS A DISCIPLINARY DEFAULT

[31] The sole issue in this hearing is whether Constable G. V., a member of the Winnipeg Police Services, committed a disciplinary default where he

affected the complainant by means of his making a false statement arising out of or in the execution of his duties, under the provisions of section 29(b) of ***The Law Enforcement Review Act***.

[32] Firstly, what is any statement? According to *Blacks Law Dictionary 8th Edition*, a statement is a verbal assertion or non-verbal conduct intended as an assertion.

[33] What is the meaning of false statement under section 29(b) of ***L.E.R.A***.? Campbell, C.J at page 13 in the **Frank** case – Canada Tax Cases 1945 (Tab 6 of Respondent's brief) said :

> I readily accept . . . submission that a false statement is not merely an inaccurate statement, but one made fraudulently with *mens rea* or intent to deceive.

[34] In **Mason v. Agricultural Mutual Assurance** 1868 O.J. No. 111 – Upper Canada Court of Error and Appeal (Tab 7 of respondent's brief), Van Koughmet said in respect of an insurance claim that:

> . . . . false is used as implying something more than a mere untruth . . ., but where designedly and knowingly making it for his advantage and to your injury.

[35] In **Regehr** (1968) 3 C.C.C. 68, Yukon Territory Territorial Court (Tab 8 of respondent's brief), Morrow, J said on an income tax case at page 5 in referring to *Black's Law Dictionary 4th Edition*, page 726 said:

> 'falsely' states that particularly in a criminal statute its use suggests something more than a mere untruth and includes perfidiously or treacherously . .

On appeal to the Yukon Territory Court of Appeal reported at (1968) 3 C.C.C. 72, McFarlane, J.A. stated:

> I am unable to agree that s. 132(1)(a) making use of 'false or deceptive' as it does could reasonably be interpreted to mean mere carelessness or recklessness but rather that *mens rea* or guilty intent forms an integral part of the offence to be established by the Crown.

[36] *Webster's New 20th Century Dictionary Unabridged Second Edition*, at page 661 includes these meanings of "false":

> 1) not true; not conformable to fact; expressing what is contrary to fact or truth; incorrect; wrong, mistaken as a false report.
> 2) untruthful; lying; dishonest; uttering what is not true; as a false witness.
> 3) not well founded; as a false claim.
> 4) not faithful or loyal; inconstant; deceitful; as a false friend.
> 5) counterfeit; not genuine or real; artificial; as false teeth.
> 6) misleading; made or assumed for the purpose of deception; as false tears.
> 7) not properly so named; deceptively resembling; as the false sunflower.

The synonyms listed at page 661 are:

> untrue, erroneous, fallacious, sophistical, spurious, deceptive, fabricated, bogus counterfeit, mendacious, sham, mock, unfaithful, dishonorable, faithless, incorrect.

[37] Section 140(1) of the ***Criminal Code*** provides that

> Everyone commits public mischief who, with intent to mislead, causes a peace officer to enter on or continue an investigation by
> (a) making a false statement that accuses some other person of having committed an offence . . .

[38] Section 134 of the ***Criminal Code*** reads:

> **1**. Subject to subsection (2) everyone who not being specially permitted, authorized or required by law to make a statement under oath or solemn affirmation makes such a statement by affidavit, solemn declaration or deposition or orally before a person who is authorized by law to permit it to be made before him knowing that the statement is false is guilty of an offence punishable on summary conviction.
>
> **2**. Subsection 1 does not apply to a statement referred to in that subsection that is made in the course of a criminal investigation.

[39] Section 137 of the ***Criminal Code***, on fabricating evidence, reads:

> **137** Everyone who with intent to mislead fabricates anything with intent that it shall be used as evidence in a judicial proceeding, existing or proposed by any means other than perjury or incitement to perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14 years.

[40] The complainant alleges that Constable G. V. committed a disciplinary default in making a false statement (Exhibit 1). The wording of section 29(b) of ***L.E.R.A***. is:

> Making a false statement, or destroying, concealing, or altering any official document or record;

[41] Under section 29 a member of the Winnipeg Police Services commits a disciplinary default when he makes a false statement arising out of or in the execution of his duties where he affects the complainant.

The word "affect" as it appears in the second last section 29 of ***L.E.R.A***. merits consideration. The same *Webster's New 20th Century Dictionary* at page 32 defines affect as:

> 1) to act upon; to produce an effect or change upon; as cold affects the body; loss affects our interest.
> 2) to move or stir the emotions of; as affected by grief.
> 3) to aim at; aspire to, to put on a pretense of; as to affect imperial sway.

As a noun "affect" is defined as:

> 1) a disposition or tendency.
> 2) in psychology a an emotion, feeling or mood as a factor in behaviour, be a stimulus arousing an emotion, feeling or mood.

Thesaurus Current Edition defines "affect" as:

> To evoke a usually strong mental or emotional response from, influence, move, touch, impact, strike, sway, impress.

[42] Is there clear and convincing evidence that Constable V. did as a member of the Winnipeg Police Services make a false or untrue statement arising out of or in the execution of his duty where he affected the complainant?

CLEAR AND CONVINCING EVIDENCE

[43] Judge Chartier - Manitoba Provincial Court - in the **A.** complaint LERA #3181 against Sgts. D. and K. (Tab 11 of Respondent's case book) at page 3 in considering that section 27(2) of ***L.E.R.A***., provides that the Provincial Judge hearing the matter shall dismiss the complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has made the disciplinary default said:

> This is a high standard of proof because the consequences to the careers of 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 connected with the word "clear" is in my view, means that it must be compelling.

[44] In the **Kuklik** decision (Tab 3 of Respondent's brief), Mr. Justice Clearwater, at page 30 of the transcript, remarked on the burden of proof that:

> "The burden . . . . is intended to mean something in between," (beyond a reasonable doubt and on a balance of probabilities)

THE BALANCE OF PROBABILITIES AND REASONABLE DOUBT

[45] In that case, Mr. Paul McKenna represented in his submission that the original draft of ***The Law Enforcement Review Act*** in 1983 provided for proof beyond a reasonable doubt; that a review of that statute in 1992 initially amended the standard of proof to that of the balance of probabilities, but after debate and presentation and committee, the burden of proof was changed to clear and convincing evidence – as a quasi criminal test.

[46] In the case of **College of Physicians and Surgeons of British Columbia** v. J.C. (1992) W.W.R. 673, a decision of the Court of Appeal of British Columbia, the following passage from the trial judge's judgment was approved by the Court of Appeal in these words:

> In the present case, the trial judge said at page 1581 and 1582 . . .
>
> The onus of proving the facts against a doctor rests with the college. 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. The case for the college must be proven by a fair and reasonable preponderance of credible evidence.

I accept that as a reasonable statement of the meaning of the words "clear and convincing evidence" in the context of the words used by Chartier, P.J. in the **Anderson** case (supra).

[47] In other words, the case for the complainant Mr. P. must be proven by a fair and reasonable preponderance of credible evidence that is clear, free from confusion, convincing and compelling.

ANALYSIS AND CONCLUSION

[48] Mr. McKenna submits that the V. statement (Exhibit 1) is not false, but at most is ambiguous and reflects an honest conclusion reached by a competent officer in the professional discharge of his duties.

[49] The conclusion that Mr. P. drove his vehicle within a minute of the police arrival at the door of his residence is based on strong circumstantial evidence.

[50] Mr. P. admitted to the police officers that he drove his Ford Ranger truck from Elie, Manitoba to his residence. He did not then say to the police or at the hearing that anyone else drove that vehicle after it was parked by his residence.

[51] Constables V. and M. were each absolutely certain that that vehicle was not parked there within one minute of the officers noting its presence there after driving around the block. Constable V. observed the usual symptoms of impairment on Mr. P. at his residence and formed the opinion that he was intoxicated.

[52] Constable V. concluded, based on the circumstantial evidence, that Mr. P., displaying clear symptoms of intoxication, operated that vehicle not 20 minutes prior to the police arrival at his home, but within the minute the police circled his block and attended at his door. As submitted and which I accept, Constable V. made a rational conclusion based on the circumstantial evidence inconsistent with any other rational conclusion that Mr. P. was operating that

motor vehicle immediately before the police arrival at his residence in an intoxicated state.

[53] I accept the testimony of Constables V. and M. and do find that Mr. P.'s vehicle was parked by his residence within the one minute it took the officers to drive around the block, and that this vehicle was not there when the officers first passed by the residence of Mr. P.

[54] The statement in Exhibit 1 represents an honest and rational conclusion based on the circumstantial evidence that A. P., while impaired by alcohol, operated the motor vehicle in question within the period of one minute or so prior to the police arrival at this door. The officer drew that conclusion then and remained steadfast in that conclusion at the hearing.

[55] In my opinion, based on all the evidence, that conclusion was well founded and the impugned statement in Exhibit 1 is not false, but true.

[56] Constable V. testified that he did not, by choosing the words he did in Exhibit 1, intend to convey the meaning that he saw Mr. P. driving or that he intended to deceive anyone into so believing, to the prejudice and detriment of A. P.

[57] There is no clear and convincing evidence to satisfy me that the statement in question is false.

[58] The complainant was significantly affected by a true statement made by Constable V. in the course of his investigation into the circumstances surrounding the operation of a motor vehicle by the complainant on August 6th, 1998. His problems flowed from his "drinking and driving". As I see the evidence, he is fortunate in escaping prosecution for this action.

[59] Accordingly, I dismiss this complaint.

SIGNED at Winnipeg, Manitoba, this 12th day of July, 2005.

Original signed by:

Judge Theodore J. Lismer