

IN THE MATTER OF: **AN APPLICATION PURSUANT TO SECTION 13(2)
OF THE LAW ENFORCEMENT REVIEW ACT, R.S.M.
1987, c. L75.**

BETWEEN:

C.P.G.

Complainant,

- and -

SGT. A.W.

Respondent.

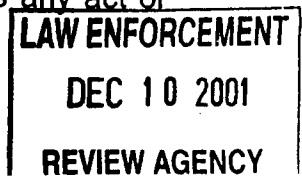
GUY, P.J.

[1] The Law Enforcement Review Commissioner has referred this matter to a Provincial Judge for hearing to determine the merits of a complaint which alleges the following disciplinary defaults, as defined under Section 29 of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75, by the above-named respondent officer, namely that the respondent officer did:

1. On or about May 20th, 1999 abuse his authority by using oppressive or abusive conduct or language on the complainant, C.P.G. contrary to Section 29(a)(iii) of *The Law Enforcement Review Act*.
2. On or about May 20th, 1999 abuse his authority by being discourteous or uncivil to the complainant, C.P.G. contrary to Section 29(a)(iv) of *The Law Enforcement Review Act*.

[2] In considering both disciplinary defaults filed by Mr. G. the standard of proof must be kept in mind. A "disciplinary fault" means any act or

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



omission referred to in Section 29 of the Act. Pursuant to Section 27(2) the Provincial Judge hearing such a matter shall dismiss a complaint in respect of an alleged disciplinary default unless that judge is satisfied on "clear and convincing evidence" that the Respondent has committed the disciplinary default. Because these are civil proceedings, the standard of proof on the Applicant is that of a balance of probabilities. But "clear and convincing evidence" speaks to the quality of evidence necessary to meet that standard of proof on the balance of probabilities.

[3] One unusual aspect to this hearing was the fact that the complainant, Mr. G. did not return to the hearing after the lunch recess. Therefore he did not have the opportunity to cross-examine the second witness for the respondent, M W , wife of the officer, who was present at the time of the alleged disciplinary defaults. Also, no argument was therefore presented by the complainant for the Court to consider. The phone message taken from Mr. G. by staff is attached as Exhibit 5.

[4] In these circumstances, an extensive review of all the facts is not warranted. Needless to say, there is a conflict in the evidence of the parties. For ease of review, the incident can be divided into three segments.

[5] The first segment deals with the alleged matter of driving by the complainant. The two parties disagree over the distance travelled by each of them, the time each was in the other's lane of travel, the speed each was travelling and the slamming on of the brakes.

[6] The second segment of disagreement is on the verbal confrontation held between the two upon the stopping of the vehicles. Although the complainant, Mr. G. acknowledges his anger and use of inappropriate language, he alleges disciplinary defaults of oppressive or abusive conduct or language and being discourteous and uncivil by the respondent in this confrontation. These allegations were denied by the respondent.

[7] The third segment of the incident was the confrontation held outside the District #2 station where both the complainant and respondent had gone. Once again a verbal confrontation took place at this location between the parties. This confrontation takes on added significance in that it was not mentioned in the complainant's initial statement - complaint sheet - Exhibit 2.

[8] Upon an assessment of the evidence I find that there has not been sufficient proof of a disciplinary default on either of the alleged defaults against the officer.

[9] Although the complainant was frank on certain issues, on other issues I found him less than forthcoming. There was a great deal of conflicting and contradictory evidence between the complainant and the respondent. Also, the wife of the respondent confirmed much of the respondent's evidence. The evidence presented by the complainant and denied by the respondent did not satisfy the necessary standard of proof - clear and convincing.

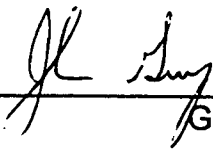
[10] I am not satisfied that the officer was oppressive or abusive to the complainant in his conduct nor discourteous or uncivil to the complainant. Where

the evidence between the complainant and the respondent was in dispute, I accept the evidence of the respondent.

[11] Both allegations of disciplinary default against the officer are dismissed.

[12] In compliance with Section 29(b), I order a ban on the publication of the respondent's name, in light of the dismissal of the matter.

SIGNED at the City of Winnipeg, in the Province of Manitoba, this 30th day of November, 2001.



GUY, P.J.