In the matter of: ***The Law Enforcement Review Act***

(L.E.R.A. Complaint No. 3573)

B E T W E E N:

Mr. G.		)
		)
	Complainant	)
		)
- and –		)
		)
		)
Constable G.		)
And		)
Constable B.		)
		)
	Respondents	)

WYANT, P.J.

[1] The Law Enforcement Review Commission 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.L. 75.

1. On or about July 30th, 1998 (the respondents did) abuse their authority by becoming involved in a civil dispute between Mr. G. and Mr. P. contrary to section 29(a) of the ***Law Enforcement Review Act***, and
2. On or about July 30th, 1998 (the respondents did) abuse their authority by being discourteous and uncivil to Mr. G. contrary to section 29(a)(4) of the ***Law Enforcement Review Act***.

[2] The first issue deals with the jurisdiction of this court on complaint number one. The applicant, and counsel for the Law Enforcement Review Agency, argue that the enumerated offences in section 29(a) are not exhaustive but only illustrative of the types of "abuse of authority" that can be committed by a Peace Officer. Counsel for the respondents indicates that the enumerated articles in section 29(a) are inclusive and that, therefore, there is no jurisdiction or authority to deal with a complaint of abusing authority by becoming involved in a civil dispute.

[3] I have been provided with extensive briefs from both counsel on behalf of the Commissioner and counsel on behalf of the respondents. Having reviewed those precedents, I am persuaded by the argument of counsel for the Commissioner. Sub-clauses (i to vii) of section 29(a) of the ***Law Enforcement Review Act*** are preceded by the term "including". I agree with counsel for the Commissioner that an abuse of authority under section 29(a) is not limited to only those types of conduct that specifically fall within the seven enumerated sub-clauses but will include anything that falls within the general meaning of "abuse of authority". The issue revolves around the meaning and purpose of the word "including". There is authority for the general proposition that the terms "includes" or "including" are enlarging whereas the terms "mean" or "meaning" are restricting. Quoting from the Privy Council's decision in ***Dilworth vs New Zealand Commissioner of Stamps*** [1899] AC. 99 @ pages 105 and 106:

> The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to the natural import, but also those things which the interpretation clause declares that they shall include.

[4] Section 12 of the ***The Interpretation Act*** C.C.S.M. C170, says as follows:

> Every enactment shall be deemed remedial, and shall be given such fair, large, and liberal construction and interpretation as best ensures the attainment of their objects.

[5] 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 of authority" can be determined on a case by case basis, the particulars of which can be itemized and therefore answerable by a respondent.

[6] This Court is not unmindful of the fact that there are exceptions to the rule with respect to the liberal or expansive meaning of the word "include". There is nothing that I found with respect to the ***Law Enforcement Review Act*** in question that would cause this Court to so restrict the right of an applicant to file a grievance bearing in the mind that the ***Law Enforcement Review Act*** was enacted in order to maintain balance between those who may be aggrieved and Officers of the law.

[7] Therefore, I will consider both disciplinary defaults filed by Mr. G. A "disciplinary default" means any act or 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 the evidence necessary to meet that standard of proof on a balance of probabilities.

[8] In the case of ***Huard v. Romualdi*** 1 P.L.R. 1993 page 217 at 328, the phrase "clear and convincing evidence" is discussed. 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 were very serious.

[9] I find that there has not been sufficient proof of a disciplinary default on either of the alleged defaults against either Officer in this matter.

[10] Mr. G. indicates that he was involved in a business relationship with Mr. P. and ultimately Mr. G. wished to pursue this business arrangement separate and apart from Mr. P. There was clearly a dispute on Mr. P.'s part with respect to the ownership or possession of certain documents and materials in Mr. G.'s possession. I don't intend to comment on the relative merits of the dispute between these two individuals. However, on Mr. P.'s request, two Officers were dispatched to Mr. G.'s business premise to "prevent a breach of the peace". Mr. G. alleges that these Officers acted improperly both by becoming involved in a civil dispute and by being discourteous to him. Both the Officers and Mr. P., who was present during this occasion, testified as to their recollection of what occurred. Both Officers indicated that their attendance had a criminal investigation aspect to it and both those two Officers and Mr. P. indicated that at no time were either Officers discourteous or uncivil to Mr. G.

[11] In support of his application, Mr. G. testified and filed a Winnipeg Police Service Operation Policy for Police Officers with respect to civil disputes. As well,

he filed a statement from his father who was present during the relevant time period. His father was unable to attend court due to medical reasons.

[12] I find that the Police Officers attended in a legitimate police role and investigation. Though they were not privy to the exact nature of the call when first dispatched, having received certain information from the parties, the Police Officers felt that the matter they were investigating could have criminal overtones. As such, it was their opinion that they proceed in a certain fashion. Although it could certainly be argued that the matter had civil overtones to it, I do not find anything in the actions of the Officers to convince me that they either breached the policy of the Winnipeg Police Service dealing with involvement in civil disputes, nor breached any of their general responsibility to prevent a breach of the peace. They were of the honest belief that a criminal offence may have been committed. They were of the belief that they needed to proceed in that investigation. The fact that criminal charges were not laid is of no moment as to what was in the mind of the Police Officers and their bona fides with respect to the investigation. A matter that is perhaps a criminal investigation need not result in criminal charges in order to vindicate the Police Officers who investigated the matter to begin with. Often times, in the embryonic stages of investigations, it is unclear to investigators as to where the investigation may take them. It was clear to me that there was a potential criminal investigation that the Police Officers were obliged to follow through on and that they did so with bona fides and with an honest belief and I find no fault in their behavior whatsoever.

[13] I am also not satisfied at all that these Officers were uncivil or discourteous to Mr. G. Not only is this disputed by the Officers and by Mr. P., but also I did not find that the evidence presented both in written fashion and viva voce by Mr. G. satisfied me. Undoubtedly, Mr. G. was upset at the course of the business relationship with Mr. P. and upset at the fact that the Winnipeg Police Service was involved in the matter. That may be understandable considering his belief that nothing untoward had occurred. However, I am also equally convinced that the Police Officers were professional in all respect in their dealing with Mr. G. and that Mr. G.'s emotion and excitement of the moment may have colored his impression of the actions and attitude of the Police Officers to him.

[14] Not only am I satisfied that there is insufficient proof on a balance of probabilities brought forward by Mr. G., I would also say that even if the burden was reversed, that the Officers would have clearly discharged that burden. Where the evidence between the Officers and Mr. G. was in dispute, I accept the evidence of the Officers and the evidence of Mr. P. In this regard then, both allegations of disciplinary default against each Officer is dismissed.

[15] During the course of the hearing, Mr. G. labeled the two Officers as "bad apples". I find that there is no evidence to support that and I further find that the Police Officers used restraint and mediation and acted properly as Peace Officers. Clearly mediation and alternative dispute resolution is a necessary, important and integral part of police work and I found that the Officers followed through with that obligation in admirable fashion.

[16] I would make the comment that it is unfortunate that this matter took so long to wend its way through a hearing. Certainly for all parties concerned, the delay can be an emotionally exhausting and draining one and this Court hopes that these matters can proceed in a more timely fashion.

[17] In compliance with section 25(b), I order a ban on the publication of both respondents' names, in light of the dismissal of this matter.

SIGNED at the City of Winnipeg, in the Province of Manitoba, this 14th day of August, 2000.

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Judge Raymond Wyant PCJ