

**IN THE MATTER OF:**

*The Law Enforcement Review Act*  
Complaint #5974

**AND IN THE MATTER OF:**

A Hearing pursuant to s.17 of  
*The Law Enforcement Review Act*  
R.S.M. 1987, c.L75

**B E T W E E N:**

**T.L.T.,**  
Complainant

) In person, unrepresented by  
) Counsel

- and -

**CST. D. K.**  
Respondent

) Mr. William Haight  
) Counsel for the Respondents

)  
)  
)  
) Hearing date: September 6<sup>th</sup>, 2005  
) and December 8<sup>th</sup>, 2005.  
) Decision date: July 13, 2006

**NOTE:** These Reasons are subject to a ban on publication of the Respondent's name pursuant to s. 25 of *The Law Enforcement Review Act*.

**C. N. RUBIN, P.J.**

**INTRODUCTION**

[1] The Respondent officer is a member of the Winnipeg Police Services. On the night of July 17<sup>th</sup>, 2002, the Respondent along with his partner Constable T.C., were dispatched by the Call Centre to attend a complaint of one M. H. at XXX – XXX Wolseley Avenue, in Winnipeg Manitoba. The

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

complaint was with respect to a tenant in the same building, but whose suite was identified by Ms H. as the suite of the complainant in this matter, Mr. T. L.T.

[2] The officers were at the scene at approximately 23:12 that evening and met with the tenant who had placed the call, detailed her complaint and assisted the officers in determining the location of the offending party, Mr. T. The officers then attended to Mr. T.'s suite and interviewed him.

[3] The complainant in this matter, Mr. T., alleges that Officer K. committed various disciplinary defaults under *The Law Enforcement Review Act (L.E.R.A.)* during his encounter with him.

[4] On the 21<sup>st</sup> day of July, 2002, Mr. T. forwarded his complaint to the Law Enforcement Review Agency, which was received on the 21<sup>st</sup> day of July, 2002 by the Commissioner Mr. George W. Wright.

[5] The initial complaint contained eight pages of allegations and material. Subsequent to that date, the complainant Mr. T. submitted further supplemental complaints: on July 23<sup>rd</sup>, 2002, on July 27<sup>th</sup>, 2002, on July 28<sup>th</sup>, 2002, on August 11<sup>th</sup>, 2002, relative to 6:21 p.m., on August 1<sup>st</sup>, 2002 – 6:23 p.m., on August 13<sup>th</sup>, 2002, and on August 15<sup>th</sup>, 2002.

[6] On the 14<sup>th</sup> day of May, 2003, the Commissioner address a letter to The Honourable Raymond E. Wyant, Chief Judge of The Provincial Court of Manitoba with respect to the L.E.R.A. Complaint #5974 of T. L. T. advising that on April 10<sup>th</sup>, 2003, the Commissioner declined to take further action on the above noted complaint pursuant to s. 13(1)(c) of *The Law Enforcement Review Act*.

[7] On April 24<sup>th</sup>, 2003, Mr. T. corresponded with the Agency and requested a review of the Commissioner's decision pursuant to s. 13(2) of *The Law Enforcement Review Act*. On April 24<sup>th</sup>, 2003, the complainant filed his appeal pursuant to s. 13(2) of *The Law Enforcement Review Act*.

[8] On March 12<sup>th</sup>, 2004, the Honourable Judge Wesley H. Swail held a review hearing with respect to the appeal on January 28<sup>th</sup>, 2004, and on March 12<sup>th</sup>, 2004, determined his decision to be as follows:

This is to advise that I dismiss the application with regard to Cst. R. C. I am referring the complaint against Cst. D. K. for a hearing.

[9] On the 2<sup>nd</sup> day of June, 2004, the Commissioner, pursuant to the decision of Judge Swail with respect to Cst. D. K., referred the matter to a Provincial Court Judge for a hearing to determine the merits of the complaint which alleges the commission of certain disciplinary faults as declined under s. 29 of *The Law Enforcement Review Act*, the above respondent officer, namely the respondent officer did:

On or about July 17, 2002:

1. Abuse his authority by using oppressive or abusive conduct or language on the complainant, contrary to s. 29(a)(iii) of *The Law Enforcement Review Act*.
2. Abuse his authority by being discourteous or uncivil towards the complainant, contrary to section 29(a)(iv) of *The Law Enforcement Review Act*.

## STANDARD OF PROOF

[10] The burden of proof in these proceedings is on the complainant to prove that the respondent officer committed the alleged disciplinary defaults. What this means is the respondent officer does not bear any burden to prove that he did not commit any disciplinary defaults.

[11] These are civil proceedings and generally the standard of proof in such proceedings is on the balance of probabilities. Counsel for the respondent submits that the standard of proof as defined in the Act is above and beyond the balance of probability while he admits the standard is less than proof beyond a reasonable doubt. He suggested it approaches that standard. The standard of proof under the Act is set out under s. 27(2) as follows:

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

[12] The term “clear and convincing evidence” has not been the subject of the same kind of judicial scrutiny or commentary as has the term “beyond a reasonable doubt” and “on the balance of probabilities” in the criminal civil context. Nevertheless a number of decisions have considered what is required for proof on clear and convincing evidence.

[13] My colleague Wyant, P.J. (as he then was), in his August 14<sup>th</sup>, 2000, unreported *L.E.R.A.* decision **Graham v. Cst. G. and B.** concluded at paragraph 7 that the term “clear and convincing evidence” speaks to the quality of the evidence necessary to meet the standard of proof on a balance of probabilities.

[14] He referred to the case of **Huard and Romualdi** 1993 1 PLR 217 where it was held that clear and convincing proof in proceedings of this kind must be based on cogent evidence because the consequences to a police officer’s career flowing from an adverse decision are very serious.

[15] On October 26<sup>th</sup>, 2000. my colleague Chartier, P.J. in an unreported *L.E.R.A.* decision **Anderson v. Cst. D. & K.** held that the standard of proof under s. 27(2) of the Act is a high standard. He stated at page 3 of his decision:

The evidence must be clear, it must be free from confusion and it must also be convincing, which when combined with the word clear in my view means that it must be compelling.

[16] I have therefore come to the conclusion based on the decisions of my colleagues and decisions in other jurisdictions with respect to the interpretation of the meaning of “clear and convincing evidence”, a high standard of proof is called for going beyond the balance or probabilities and based on clear and convincing evidence and that the case must be proven by a fair and reasonable preponderance of credible evidence. Trial judges have held that the most helpful term in various judicial pronouncements on this subject is convincing and that “to be convinced” means more than merely to be persuaded.

[17] Having reviewed the written complaint of the complainant and reviewed the evidence given on direct examination and in cross-examination, as well as the evidence of the respondent in direct and cross-examination, I can find nothing in the complainant’s evidence other than allegations, theories of conspiracies and theory upon theory upon theory with respect to the behaviour

of the respondent, but nothing by way of proof of the foregoing to establish that the respondent officer abused his authority and committed a disciplinary default by use of oppressive, abusive, discourteous or uncivil conduct. There is simply no clear and convincing evidence that these abuses happened. The respondent officer has had his reputation tarnished because of these allegations and it is regrettable that this matter has had a four year genesis before resolution.

[18] Accordingly, I dismiss this complaint.

SIGNED at Winnipeg, Manitoba, this 13<sup>th</sup> day of July, 2006.

---

Judge Charles N. Rubin