

[3] Evidence was heard over the course of one day and the matter was adjourned to permit the provision of written reasons. Following are my reasons for decision on the merits of the complaint.

THE TESTIMONY

(i) The complainant - A.R.

[4] The complainant alleges that on July 16, 2004, he was riding his bicycle northbound on Langside Street from Furby Street going towards his home. As he was approaching his residence he noticed a Winnipeg Police Service cruiser car parked up on the sidewalk and an officer speaking with an unknown individual. The complainant continued past his residence and the officer as he had decided to attend a local automated banking machine. As he was passing the officer and the male, he did acknowledge hearing the officer tell the male to put the liquor away and that will be it.

[5] At Langside Street and Sara Avenue the complainant realized he did not have his wallet and/or bank card on his person and turned around to proceed southbound on Langside Street.

[6] As he passed the officer, later determined to be respondent officer, the complainant stated that he mumbled to himself “nice parking job.” He then continued on towards his residence without looking at the officer. Shortly after passing the officer, the complainant heard yelling and looked back to see the respondent officer running towards him. The complainant came back towards the officer to see what it was he was yelling about.

[7] The respondent officer apparently stood over the front wheel of the bike and asked the complainant what he had just said. Initially, the complainant said nothing but upon repeated demands to repeat what he had said he repeated his earlier comments to the officer and asked him why it was necessary for him to park on the sidewalk.

[8] During this initial contact with the respondent officer, the complainant made attempts to get the badge number of the officer as he felt the respondent officer was being abusive. The respondent officer noted this attempt and said to the complainant “you want my badge number, I will give you a ticket.” The respondent officer then grabbed the book bag being held by the complainant and asked what was inside. The complainant pulled the bag away and told the

respondent officer that he had no right to look inside the bag nor did he have a right to search him.

[9] The respondent officer asked for the identification of the complainant and was advised by the complainant that he had left it in his residence. He then showed the officer where he lived and was permitted to attend there on his own to retrieve his identification.

[10] While in the residence, the complainant contacted his lawyer, Mr. B., for advice. Initially, the complainant stated he was advised not to return outside, advice of which the complainant said he could not follow. Upon locating his identification, the complainant went back outside but took the phone with him. During this entire time the lawyer apparently remained on the line so he could hear what was occurring.

[11] The complainant provided his identification to the respondent officer who noted the complainant in possession of the phone. The respondent officer demanded the phone be hung up at which time the lawyer advised the complainant that he would like to speak to the respondent officer. Within seconds of taking the phone, the respondent officer was observed to terminate the call and said to the complainant he could call him back after they were done. The respondent officer then told the complainant to wait as he was going to teach him a lesson.

[12] The respondent officer returned to his cruiser car and while there an unidentified woman came out of an apartment building and asked the officers for assistance. The complainant was told to wait where he was as the officers went into the apartment building. About 10 to 15 minutes later the officers returned outside. The ticket could still not be issued as the respondent officer did not have any on his person. About 15 minutes later another police unit arrived on scene and dropped something off to the respondent officer and his partner.

[13] The respondent officer continued to berate the complainant up until he issued him with a common offence notice and told him he could leave. The complainant stated that he asked what he was being issued a ticket for and was advised it was for failing to keep right when meeting a moving vehicle. The respondent officer apparently then told the complainant that he could fight the ticket in court. As the complainant was walking away, the respondent officer then said "that is what you get for beaking off at the police."

[14] The complainant then returned home and made notes of what had happened that evening. The next morning the complainant proceeded to file a complaint with the Law Enforcement Review Agency.

[15] In cross-examination, the complainant could not provide a rational reason as to why he would attend the banking machine without a wallet. He had indicated that "I do not usually carry wallet around" yet was apparently on his way to an automated banking machine and returning when he allegedly made the comment.

[16] The complainant also admitted that he has authored articles on his own website concerning this matter. In that and in his statement to L.E.R.A. the complainant acknowledges that he did not specifically state that the comment to the officer was made under his breath.

[17] The complainant did acknowledge writing other derogatory notes about the respondent officer and apologized to the respondent officer in court for letting his frustration get the best of him.

[18] Finally, the complainant acknowledged that Constable C. was also present but he did not participate in the incident. He himself did not have dealings with Constable C.

[19] These then are the allegations of physical abuse and verbal abuse offered by the complainant against the respondent officer.

(ii) Mr. M. B.

[20] Mr. B. was called by the complainant to testify on his limited interaction with the respondent officer on the date in question.

[21] By way of background, Mr. B. is a sole practitioner who has been in the practice of law since his graduation in 1996. He acknowledged that he does not practice criminal law and at the time was doing solicitor work for a business of the complainant.

[22] On the evening in question, Mr. B. heard his office phone ringing and went to answer. He found that it was the complainant calling and he sounded extremely agitated and extremely scared. The complainant told Mr. B. that he had been cycling home and was stopped by Winnipeg Police Service and one of the officers was nuts.

[23] Mr. B. was advised by Mr. R. that he was permitted entry into his home in order to locate his identification. They spoke for some 3 to 5 minutes during which time Mr. B. was advised by the complainant that he had been out cycling and at some point muttered something about the parking of a police car. He was then stopped by the police but was not sure for what reason he was being detained.

[24] The complainant asked what he should do and was told by Mr. B. to go back outside and provide that identification that was requested. At this point Mr. B. said the phone call was terminated by the complainant.

[25] Several minutes later Mr. B. received a phone call back from the complainant. He was advised that the respondent officer was still agitated and that they were discussing the ticket to be issued. Moments later the officers approached the complainant and Mr. B. could hear one of the officers asking who you are speaking to on the phone.

[26] The respondent officer came onto the phone and was immediately belligerent. The respondent officer asked who he was and Mr. B. explained that he was the complainant's lawyer. The respondent officer was then said to have raised his voice and indicated that he could speak to the complainant once they were finished. The phone call was then terminated by the respondent officer. Mr. B. tried to call back for some 10 to 15 minutes. However, unbeknownst to him, the complainant was not using the phone that he had the number for.

[27] In further examination, Mr. B. did acknowledge offering advice to the complainant that perhaps he should not return outside. He indicated that came up as there was concern the respondent officer may be out of control.

[28] In cross-examination, Mr. B. acknowledged that he was not a criminal lawyer but did know of a Supreme Court of Canada case that dictated the obligation on a citizen to provide identification if asked by the police.

[29] As for the officer in question, Mr. B. did state he did not know the respondent officer nor did he know what the officer's regular speaking voice sounded like. He also agreed that he did not have any first-hand observations of what was occurring at the scene or how the respondent officer was behaving.

(iii) Constable C.

[30] Constable C. testified that he was in fact working on the date in question and was partnered with the respondent officer. They had been assigned to a mental health call on Langside. Prior to attending the scene, a number of computer checks had been conducted based on the information available to that time.

[31] Upon attending to that location, the cruiser car was parked up on the boulevard as the officer was not sure what type of service would be required.

[32] As they were exiting the cruiser car, a male was noted to be carrying open liquor while out on the street. The respondent officer went over to deal with this male as this was an offence occurring.

[33] While the respondent officer was dealing with this male, Constable C. noted the complainant ride by on his bicycle and heard him say sarcastically “nice parking job.”

[34] Although Constable C. did not have direct dealings with the complainant, he was present and observed much of the interaction. Constable C. does indicate that, at times, he could not hear what was being said between the respondent officer and the complainant as they were also dealing with the mental health call at the same time. However, he always had them in his sight during their interactions.

[35] Constable C. saw his partner approach the complainant and begin to deal with him concerning an offence. He described the respondent officer as being professional and calm as he tried to explain the offence committed to the complainant. During this time, Constable C. felt that the complainant became somewhat agitated and was directed to attend his residence to obtain his identification.

[36] Both officers then attended into the apartment block to deal with the original call while the complainant was permitted to attend into his house to obtain his identification.

[37] The officers then dealt with the original call for service and eventually returned to their cruiser car with a male in custody. They placed him in the back and Constable C. remained in the car to deal with that individual.

[38] The respondent officer approached the complainant who had now returned from his residence with his identification. The respondent officer then returned to

the cruiser car and proceeded to write up a ticket. During this time, Constable C. advised that he saw the identification of the complainant and confirmed the notes written on the back of the ticket as depicting what had occurred.

[39] The respondent officer was then observed to get out of the cruiser and approach the complainant where he provided him with the ticket. It appeared that upon receipt of the ticket, the complainant wanted to argue about its merits.

[40] At no time during their interaction with the complainant did Constable C. see the respondent officer search or try to search the complainant.

(iv) **Constable K. S.**

[41] The respondent officer indicated that he has been a member of the Winnipeg Police Service for about 13 years. He and Constable C. were partnered together on the night in question although they are no longer partners.

[42] On the night in question, he did acknowledge parking on the sidewalk and did so for practical and tactical reasons. In essence, he stated that where it may be necessary that someone needs to be extricated quickly then parking as close to the door as possible is best for all. That was the concern here as it was a suicide call they were attending.

[43] Upon exiting the cruiser car, the respondent officer said he dealt with a male who had open liquor. Upon informing him of the issue of drinking in public, the male agreed to have his beer dumped out and then went on his way.

[44] At this time, the complainant was observed to be riding his bike on the wrong side of the street and as he passed the officers was heard to say “nice parking job.” According to the respondent officer this was said in a derogatory and sarcastic manner.

[45] The respondent officer decided that he would have a conversation with the complainant to advise him of the concern that his riding was contravening the *Highway Traffic Act*. During this conversation he tried to inform the complainant of the possible infraction committed along with the danger present given that he was also wearing dark clothing and the bike did not have any reflectors.

[46] The respondent officer found the complainant was not interested in listening but more interested in arguing about the matter. As it did not appear to the respondent officer that the complainant was prepared to learn from his mistake, as

the earlier male with open liquor had, a decision was made to issue the complainant a *Highway Traffic Act* offence notice.

[47] The complainant did not have any identification on his person so he was permitted to return to his house to retrieve it. During this time both officers went into the apartment block and dealt with the initial call for service, that being a suicidal male. A male was located and he was removed from the building and placed within the cruiser car.

[48] When the complainant came out from his house, he was observed to be carrying a telephone and was asked who he was talking with. The respondent officer did agree he took the phone from the complainant and spoke briefly with a male who identified himself as the complainant's lawyer. The respondent officer then told the lawyer that he could speak to the complainant later. The respondent officer then hung up the phone.

[49] The respondent officer denied being loud and aggressive. He did suggest that his natural voice was one that is loud but he did not raise it any further during his dealings with the complainant. At no time did he ever tell the complainant to shut up or be rude in any other manner.

[50] As for the issuance of a ticket, the respondent officer denied issuing one because the complainant wanted his badge number. In fact, if the complainant wanted the badge number the respondent officer advised that it is visible on both applets, not just one.

[51] In cross-examination, it was suggested by the complainant that most of what was testified to by the officer was a lie. This was denied by the respondent officer.

[52] The respondent officer denied the assertion that he tried to search the book bag of the complainant and then perhaps his person.

[53] The respondent officer did agree that the issuance of offence notices is always at the discretion of the attending officers. He pointed to the fact that the male with open liquor seemed to understand his mistake and suggested that nothing further would be served by issuing him a ticket. That being said, he denied that he only issued the offence notice to the complainant because he wanted his badge number. The respondent officer indicated that he did so as the complainant did not seem to recognize he had made a mistake as he continued to deny the material facts.

(v) **Position of the complainant**

[54] In his closing comments, the complainant expressed some reservation as to whether the evidence adduced met the test. That being so, he did suggest to the court that the respondent officer was not truthful throughout most of his testimony.

[55] The complainant acknowledged that he was concerned why he was getting a ticket as at no time was he riding his bike on the wrong side of the road nor was there a car as suggested by the officers. He acknowledged that he may have been argumentative on that issue but he suggested people do argue with the police on tickets.

[56] It was certainly felt by the complainant that this whole incident arose because he wanted to obtain the badge number of the officer. As a result, the officer was yelling at him and also yelled at his lawyer on the phone.

[57] Finally, the complainant acknowledged that it was his word against that of the officers. He surmised that if had a recording device that may have helped and asked the court the rhetorical question, why would he be rude and aggressive when he had prior experience as a neighbourhood coordinator.

(vi) **Position of the respondent officer**

[58] Counsel for the respondent officer reminded the court of the legal test to be imposed and that the burden of proving this offence falls upon the complainant.

[59] When assessing the credibility of the complainant, counsel suggested that notice should be paid to the demeanour of the witnesses. At the time of the incident, the officers are on a call, the nature of which the complainant does not know. As the complainant is going by it is suggested that he waited for an opportunity to be heard by the officers and stated it sufficiently loud that it would be heard.

[60] It is also suggested that the court ought to consider that although the complainant testified he muttered the comment under his breath, that description was not contained in any previous statements made concerning this matter.

[61] It is suggested that it is the complainant who was making rude comments when he said “nice parking job” and “thanks for the name” when the ticket was issued.

[62] As for the evidence of Mr. B., counsel suggests that the court ought to find that perhaps the witness was advocating for the complainant during his testimony.

[63] Had there been more civility from the complainant, counsel suggests that may have led to no issues arising that evening. It was the complainant, through his comment while riding by, who initiated the contact with the Winnipeg Police.

[64] Counsel for the responding officer asks the court to find that no conduct as alleged by the complainant occurred on the evening in question and the complaint should therefore be dismissed. If the court finds that perhaps the respondent officer may have been yelling, then the court should look to the L.E.R.A. decision No. 6100 of Joyal J., as he then was, which states that discourtesy must amount to an abuse of authority to be an offence.

THE STANDARD OF PROOF

[65] Initially, it should be stated that the burden of proof in this quasi-civil proceeding falls upon the complainant to prove that the respondent officer committed the alleged disciplinary default. The respondent officer has no onus to disprove any of the allegations.

[66] The degree of proof required is set out in section 27(2) of the *Act* as follows:

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.

[emphasis added]

[67] What “clear and convincing evidence” is has been the subject of prior judicial comment.

[68] Wyant P., as he then was, in the unreported L.E.R.A. decision of *J.G. versus Constable G. and Constable B.*, dated August 14, 2000, made the following comment on the standard of proof at para. 7:

.... But “clear and convincing evidence” speaks of the quality of the evidence necessary to meet that standard of proof on a balance of probabilities.

[69] At paragraph 8, Wyant P. referenced the case of *Huard v. Romualdi* 1 P.L.R. 1993, at page 217 of 328, where it was stated:

.... It means that the proof must be clear and convincing and based on cogent evidence because of the consequences to a Police Officer's career flowing from an adverse decision were very serious.

[70] In the unreported L.E.R.A. decision No. 3181 of *A. v. Constables D. & K.*, Chartier J., as he then was, held that the standard of proof under section 27(2) of the *Act* is a high standard. At page 3 of his decision he stated:

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

[71] The standard of "clear and convincing evidence" is also contained in the *Medical Practitioners Act* of British Columbia. That *Act* sets out to deal with alleged acts of professional misconduct by doctors and uses as the standard of proof "clear and convincing evidence." In the case of *A.B. v. College of Physicians and Surgeons of British Columbia*, [1994] B.C.J. No. 785, Gibbs J.A. of the Court of Appeal adopts at para. 12:

.....

The onus of proving the facts against Dr. A.B. rests with the College. To discharge that burden a high standard of proof is called for, going beyond the balance of probabilities and based upon clear and convincing evidence. The case for the College must be proven by a fair and reasonable preponderance of credible evidence. That is the standard of proof which will be applied by this committee.

[72] Based on this review it is apparent that the standard goes beyond the normal civil standard of proof on a balance of probabilities but does not extend to that of proof beyond a reasonable doubt as in a criminal case.

[73] A court must have credible evidence that goes beyond merely being persuasive but is all of clear, free from confusion, convincing and compelling as

was concluded by my colleague Lismer P. of the unreported case of *A.P. v. Constable V.* dated July 12, 2005. Lismer P. stated at para. 47:

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

[74] It is only with this type of evidence that a court can correctly, in my view, balance the need to ensure members of the public are treated fairly and appropriately by the various police services while also ensuring that an officer's career is not unduly hampered.

THE FINDINGS

[75] Initially, it should be noted that although it is obvious that the complainant is an intelligent and well spoken individual, it was also apparent that he experienced a degree of difficulty in representing himself on this matter. By that, I mean to say that his lack of legal training, or having such a person present, seemed to limit his ability to present his case. On at least two occasions where a line of questioning was being pursued it was stopped, perhaps prematurely, as it seemed that the complainant was becoming frustrated as he was not getting the answers he was looking for.

[76] The current scheme of legislation permits a citizen to file a complaint of police misconduct and then sets out a process that essentially screens the complaint before it is permitted to be heard on its merits.

[77] Often, once a determination is made that the matter should be heard, many of the complainants present without the assistance of counsel for many reasons. However, the respondent officers will often appear with the assistance of counsel and an uneven field is thereby created.

[78] The lack of legal training, or the lack of assistance of such a person, often results in not all of the evidence that should be adduced being adduced. In addition, it often results in evidence not properly being tested as an aid to assess the credibility of that witness.

[79] In the case for the complainant, there were a number of occasions where he expressed frustration as to whether he was doing, saying or asking what was necessary for the scope of the hearing. It was also evident that he did not fully

understand the concept of cross-examination as an aid for the court in the assessment of credibility.

[80] In cases such as this the fundamental issue to be addressed is often that of credibility. However, that assessment cannot be done in the context of whose evidence do I prefer but rather it must be done in the context of the applicable test of “clear and convincing evidence.”

[81] I have had the opportunity to listen to the evidence and observe the demeanour of the witnesses as they testified. There are no truly independent witnesses to this matter and I say that recognizing that Mr. B. has nothing to gain from the resolution of this matter. However, it is clear that he was not physically present at any point during this incident and had very minimal contact with the respondent in this matter.

[82] Upon a review of the evidence, I find a lack of compelling evidence that is free of confusion. I find that there exists a lack of sufficient proof and therefore I am not able to say that I am persuaded by clear and convincing evidence that the respondent officer has committed the disciplinary default. As a result, the complaint alleging a disciplinary default against the respondent officer is dismissed.

[83] The incident that ultimately led to the issuance of a *Highway Traffic Act* offence is somewhat unfortunate in that it began as a somewhat trivial matter that soon evolved and took on a life of its own. I say trivial in the sense that it was an allegation of a *Highway Traffic Act* breach where the officer chose to issue an offence notice. It is apparent from the evidence that I do accept that had the complainant acknowledged or accepted the officers comments that a decision not to issue an offence notice may have occurred.

[84] When I assess the evidence of the complainant I find that there are some troubling aspects to it that cast a degree of concern as to the entirety of his evidence.

[85] It is clear from the evidence that the Winnipeg Police were not initially dispatched to deal with the complainant but were on a call concerning a suicidal male. It is the complainant who initiated an interaction with the police when he made the comment of “nice parking job” as he passed the officers for a second time.

[86] The complainant stated in his evidence that as he was passing the officers he made the comment to himself under his breath. He further clarified that at the time

he made this comment he was not looking at the officers and, in fact, continued past them on his way home. However, he did agree that in subsequent statements he made, he never once indicated that the comment he made was done under his breath.

[87] The complainant testified that he made this comment as he felt that having a police cruiser car up on the boulevard was an eyesore for the community. He acknowledged that he did not know for what reason the police were present in the area at the time and for what reason they were parked where they were.

[88] This all has to be taken in the context that the complainant was once the coordinator of the neighbourhood watch program and had indicated that in the past he had worked extensively with police officers in his capacity.

[89] It defies logic that if the comment was basically made in an inaudible tone, in a direction other than at the officers, then how can it be that both officers detected anything.

[90] As stated earlier, the police were not present in the area to deal with the complainant nor was there any evidence that they had a motive to initiate contact with the complainant.

[91] On this point, I accept the evidence of the police officers that the comment was stated at an audible level far more than testified to by the complainant. With this finding, I am also prepared to conclude the comment was heard by the officers as they indicated in their evidence. Given the complainant's explanation for why he made the comment, I am also prepared to accept the interpretation that the comment was made sarcastically.

[92] A further point of issue stems from the evidence of the complainant and the reason why he initially went by the officers at the outset. The concern arises from the fact that the complainant presented as a very organized and regimented individual. He testified that it was his practice not to carry his wallet, any identification or other material on his person when he was outside of his residence. In other words, it was not by mistake or human error that he did not have his wallet with him while on his way home that evening but rather it was by choice.

[93] With that background, the complainant testified that, as he was cycling home, is when he decided that he needed to attend a bank machine to make a withdrawal. He had already observed the officers dealing with a male as he approached and rode by on his bicycle. He could hear the respondent officer

[94] This realization did not come about as a result of the complainant checking his possessions but did so, in my view, as it was his practice not to carry such materials. He immediately turned around and again came upon the officers still with this male when he made the comment I have found as a matter of fact. This causes the court to reflect and leave unresolved as to whether his purpose for initially going past the officers was really for the purpose of going to the bank or was done as a means to purposely initiate contact with the officers.

[95] As for the interaction between the respondent officer and the complainant, there is no evidence that these individuals had any history of prior contact. The complainant testified that the respondent officer was loud, yelling at him and being oppressive to him throughout their interaction.

[96] Once again, I cannot accept this conclusion. Both officers testified that the respondent officer's normal tone is loud. I had the opportunity to hear the respondent officer testify and it is my view that his voice was louder than any of the other voices in court. He also spoke with an authoritative tone during the entirety of his testimony.

[97] If that is how the respondent officer spoke during his interaction with the complainant, then I cannot agree with his characterization of being yelled at in an oppressive manner.

[98] The complainant did not provide the court with anything to compare or analyze the tone being used by the respondent officer. What was the tone of the respondent officer's voice when he was dealing with the unknown male at the outset? Did that change once he began to deal with the complainant? Did the respondent officer continue to use the same tone throughout the entirety of his interaction with the complainant or were there changes in the tone that was used from a so called "normal" voice to one that was yelling?

[99] The answers to these questions may have assisted the court. The respondent officer testified that at no time did he yell at the complainant and that is supported by the testimony of Constable C. who indicated that his partner dealt with the complainant in a professional manner.

[100] I find that I am unable to accept the evidence of the complainant that the respondent officer dealt with him in the same tone and manner throughout the

interaction and that was in a loud and oppressive manner. There is simply nothing before the court that would support that conclusion.

[101] It is my view that although I accept that the complainant detailed the events as they, in fact, did occur, I find that he minimized his involvement in this matter and overstated that the actions and involvement of the respondent officer.

[102] As for the evidence of Mr. B., I find it to be of no particular assistance in the determination of this complaint. Besides there being some evidentiary contradictions, such as whether the phone call was terminated but reinstated by the complainant or not, that I attribute to the length of time between the incident and the date of hearing, there again is lack of context for the conclusion drawn.

[103] The comment by Mr. B. that the officer was yelling was based on what he heard on a cordless phone that was being used outside of the residence and from the brief interaction he had with the respondent officer when the phone was taken by him. There again is no evidence that would assist me to conclude that the officer's behaviour at the time was either abusive or oppressive. What is clear is that the officer spoke briefly with Mr. B. and correctly told him that he could speak with the complainant once they were concluded.

[104] In general, I found the evidence of the officers was given in a straightforward manner.

[105] Constable C. impressed me with his ability to detail the events in a chronological manner and at times correct the complainant when he appeared to have the sequence of events out of line. He admitted that he was not the primary officer involved in this matter and it appears that there was nothing untoward about this incident that would have necessitated him to become more involved.

[106] Constable C. admitted that at times he was not directly present when his partner spoke with the complainant and as a result he could not testify to what was said at those times. This fact was acknowledged by the complainant who indicated that he had virtually no interaction with this officer.

[107] Constable C. indicated that when he was not directly present with his partner he was within visual range of that interaction and described what he saw occurring. At no time did he ever hear or see the respondent officer act in an abusive or oppressive manner with the complainant. In fact, he was of the view that at times it was the complainant who was acting in a rude and difficult manner.

[108] Although I am prepared to conclude that the complainant may not have agreed with the evidence of Constable C., he also did not seriously challenge the evidence during cross-examination. Again, my concern is that this may have been as a result of not being sure what it is that is required.

[109] As for the respondent officer, I found that his evidence had a ring of truth to it such that I am prepared to accept it. His evidence that had the complainant acknowledged what he was alleged to have done was erroneous would have probably resulted in no ticket being issued is supported by his actions with the male consuming liquor on the street.

[110] Given the testimony of the complainant, I do accept that he did not agree with the officers' observations and that he did, in fact, question the need for further police intervention. Whether that was being argumentative or not need not be decided other than that there is a basis to conclude that there was continued interaction between the two as a result of initial observations of the officers.

[111] Given the observations above, I am unable to conclude that there exists clear and convincing evidence to satisfy me that the respondent officer acted in an abusive or oppressive manner on the date in question.

[112] As the matter is dismissed, there will continue to exist a publication ban on the name of the respondent officer pursuant to section 25(b) of the *Act*.

MOAR, P.J.