

IN THE MATTER OF: THE LAW ENFORCEMENT REVIEW ACT.

BETWEEN:

M. B.

Complainant,

- and -

L. M.

Respondent.

REASONS FOR DECISION

Appearances:

**M. B. on his own behalf.
Paul McKenna, for the Respondent.**

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

Pursuant to subsection 6(3) of The Law Enforcement Review Act ("the Act"), on December 13, 1996, M. B. , the Complainant, filed a complaint against L. M. a member of the City of Winnipeg Police Service, the Respondent.

In his letter of complaint, Exhibit 1, Mr. B. sets forth four complaints, as follows:

(1) The constables should have concentrated their efforts on establishing if there was a breach of the peace instead of debating civil law and badgering me about irrelevancies. I was co-operative by inviting them in and providing them with my name, a piece of Manitoba identification and my status of title.

(2) The constables ought to have talked to the complainant first. I do not believe that the complainant Ms B. ever said there was. She may have said that I was trying to stop her moving which was only true in a colloquial sense. If questioned, she would probably have provided the same facts as I did. I never stopped the constables from interviewing her - I was too busy too (sic). I allowed the male constable to wander about my house to find her when they finally did get around to it.

(3) I do not expect the police to carry all the laws of Canada and Manitoba in their heads, but I do expect them not to "wing it" pretending that they do. If they do not already, that ought to have easy access from the field to a Police Department lawyer. At the least they should be fairly familiar with the *Criminal Code*, R.S.C., c. C-34, s. 41:

41. (1) Every one who is in peaceable possession of a dwelling-house or real property and every one lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove the trespasser therefrom, if he uses no more force than is necessary.

But I never asserted that right against the movers or the police. I dealt with it more "civilly". A court should have decided if I was wrong, not the police at the scene. And the police constables never did commit; they just stood in my house and harassed me. I did not even get the chance to get in that the movers had already left.

(4) If I was being detained or arrested, I should have been informed thereof and of my *Charter* rights. If I was not detained or arrested, I should

not have been treated with such disrespect and the constables should not have tried to force me to answer questions to which they were not legally entitled. From a purely public relations point of view, the police exercised poor judgment. What was the reason for so antagonizing me? (Ironically, the doors of Winnipeg's police cars loudly proclaim "Community Commitment".)

Subsection 17(1) of the Act provides, *inter alia*, that the Commissioner shall refer a complaint to a Provincial Judge for hearing on the merits when the complaint cannot be resolved informally.

Subsection 17(2) of the Act provides:

Where the Commissioner refers a complaint to a provincial judge under subsection (1), the Commissioner shall serve the respondent with notice of each alleged disciplinary default in the form prescribed by the regulations, and the Commissioner shall forward a copy of the notice of each alleged disciplinary default to the provincial judge.

The Notice of Alleged Disciplinary Default, Exhibit 2, alleges that Constable M. did:

On or about November 16, 1996 use oppressive conduct or language towards the complainant, M. B. in contravention of Section 29(a)(iii) of The Law Enforcement Review Act.

It is important to note that Mr. B. did not specifically complain of "oppressive conduct or language" in his letter of complaint. These words are the Commissioner's characterization of Mr. B. 's complaints. Mr. B. complained of "conduct"

which he described as "aggressive and rude", "bellicose" and employing an "insulting and bullying tone". Mr. B. complained of Constable M. 's "interrogation", "irrelevant questioning", being "accusatory" and "patronizing". He alleged that Constable M. "glared" at him "menacingly", engaged in "debating civil law and badgering" him "about irrelevancies" and "harassed" him. Constable M. is alleged to have "treated" Mr. B. with "disrespect" and "tried to force" him "to answer questions to which they were "not legally entitled". Finally, Mr. B. alleged that Constable M. "exercised poor judgment" and engaged in "antagonizing" him.

On April 26, 1999, pursuant to subsection 17(1)(b) of the Act, the Commissioner referred the complaint to a Provincial Judge for a hearing on the merits of the complaint. The hearing took place before me on December 8, 1999.

On November 16, 1996, the Complainant was one of the registered owners of X ADDRESS, Winnipeg, Manitoba, a 2 1/2 storey dwelling house. The Complainant described the dwelling house as a single family dwelling. Historically, the house was used as a rental property.

In September, 1996, K. B. rented the two room suite on the top floor. Ms B. 's suite had a stove and fridge. It did not have a bathroom. The Complainant described the arrangement at the house as follows: there was one front door to which everyone had a key; the bathrooms were shared; a shower in the basement was shared; and the kitchen was shared.

The Complainant and the other registered owner, P. J. S. , were the other occupants of the residence and shared the bathrooms, shower and kitchen with Ms B.

Ms B. paid rent of \$200.00 per month plus 1/3 of the electric, water and natural gas bills.

On October 30, 1996, because of difficulties the Complainant and Ms S. were having with Ms B. , Ms B. was invited to move out. Ms B. agreed to do so.

On November 16, 1996, Ms B. advised that she was going to be moving out and had arranged for the movers to move her possessions out that day.

The rent for November, 1996, which was due on the 1st of the month, had not been paid. Nor had Ms B. paid her share of the November utility bills. The Complainant became concerned that Ms B. would move out without paying the rent and that he would not subsequently recover the monies due from Ms B. The Complainant, therefore, decided to withhold permission from the movers, to enter the property at X ADDRESS.

When the movers arrived, the Complainant advised them that Ms B. owed rent and he was therefore withholding permission for them to come on to the property to help her move out. Ms B. protested and stated that the Complainant could not seize her possessions. The Complainant advised Ms B. that he was not seizing her possessions, that she was free to carry her possessions to the property line, but that he was withholding permission from the movers to come on to the property to help her move out.

Ms B. telephoned the police. The Complainant then spoke to Constable S. of the Winnipeg Police Service on the telephone and advised him of the events. The Complainant also advised Constable S. that there was no need to send out a

cruiser car because a breach of the peace was not occurring, but if they did, it was okay.

Subsequent to the telephone conversation and before any police arrived on the scene, Ms B. advised the Complainant that she would return in two days with the money due and the movers. The impasse was resolved.

Sometime after, the Respondent and Constable D. P. attended the residence. The Complainant invited them inside the residence and advised them that Ms B. was up on the third floor. The Complainant advised them they could proceed upstairs to talk to Ms B.

The Complainant then proceeded to give the constables a "brief account of what happened". Mr. B. testified that he then said to the peace officers:

And if you folks come and sort of ride shotgun to escort the movers on to the property, I'm not going to do anything physical to resist; nor have I to this point done anything physical to resist, but on Monday, I'm going to head down to the Queen's Bench, and I'm going to file a claim, a Statement of Claim, for trespassing against the absconding debtor, the escaping debtor, who I have no idea where she is going, so I have to collect from her, and against the trespassing movers and against the Winnipeg Police. (Evidence: p. 35, l. 19-p. 36, l. 5)

According to the Complainant, the Respondent replied that the police have certain immunities and Mr. B. replied "not for wrongful entry". Mr. B. testified that this exchange greatly antagonized the constables and they began to "interrogate" him, to ask him questions.

I think it important to put the substance of the complaint in the Complainant's own words:

... I should point out that once I said my piece, I was walking away from them, going back to the living room

... And that's when they sort of started asking questions. And the conduct of the questioning was primarily, if I had to put a percentage on it, 90 percent it was Constable M.

And she said, what is your name? Well, I don't have to give it to you, but it's M. B. . So she wrote that down. What is your middle name? Well, I never use it, but it's R. I don't usually use it, but it's R. What is your birth date? I said I don't have to tell you my birth date; that's not relevant. I don't have to give you that, and I don't want to give it to you. What do you mean you don't have to give it to me?

Now this was what antagonized them; both constables, but primarily Constable M. . What do you mean you don't have to give it to me. I said, well, it's not relevant. I don't have to give you my birth date.

Okay, let's see some I.D. Do you have your driver's license? And I said, well, I'm not driving a car, so I don't have to produce my driver's license. And this really aggravated the constable. Well, you have to produce some I.D. Produce some photo I.D.; produce some I.D. with a photo. And this went on for several minutes. And they just didn't take no for an answer.

Then let me see ... I said, okay, I'll produce one piece of I.D., and I took out my Law Society card; this card in fact; for the 1996, '97 practice year. And I gave it there or put it down on the bookcase. I think I moved towards the constable and put it down.

I will never in my life ever do something like that again. I will never let them know that I'm a lawyer, because that was sort of – to my mind, it up'd the ante. It was like poking a stick in a wasps' nest. They got very insulting about that. You know, you're acting very strange. How long have you been practicing? And they got quite insulting about – about you know, you're acting very strange.

So I will admit to that mistake in producing my Law Society card. I'll never do that again. And she said, well, you know, a picture I.D.; I need a driver's license. I already said I don't have to produce that. It's irrelevant. I don't want to produce that. And I said besides, you got my Law Society card; there you go. And she said, well, anyone could produce that. It could be expired. It could be invalid. It could be just a laminated card. Anyone could produce that. I personally wouldn't try to cross the Law Society, but that's what she said.

And so the questioning sort of continued in this vein, including sort of the insults about you're acting very strange, blah, blah, blah. And then I said, do you want to see a land title; that's relevant, and I produced the Land Title. So she said, yes, I would like to see a land title. I said, okay, good. I'll produce that, so don't go away. Stay there and don't go away.

So I left the constables standing where they were standing at the bottom of the stairs. . . . (Evidence: p. 36, l. 20-p. 39, l. 23)

So I came back several minutes later, and they were still standing there. And I put the Certified Status of Title down at the end of the bookcase. . . .

So I just put it down there. And Constable M. sort of glanced at it. I wouldn't say that she read it. She glanced at it and then continued with her questioning about the – about the . . . You know, producing I.D., et cetera.

And some of the questioning, occasionally it would get interrupted, and then she would keep talking about, you know, this is a civil dispute. And, you know, why don't you take this up with Residential Tenancies? And I said, well, we talked to Residential Tenancies, and they say that this isn't Residential Tenancies. (Evidence: p. 40, l. 21-p. 41, l. 15)

Mr. B. continued:

.... And I said, well, I think what I'm doing is "distrain". And she sort of stopped in her tracks for a second and thought about it, but then sort of continued on with the interrogation.

So finally, the male constable, Constable P. said where is the complainant right now? And I said, she is probably up on the third floor in her suite. And I said, you know, you can go see her.

So at this point, Constable P. went upstairs and talked to Ms..
 B. . And I continued, I guess, my attempts at not answering Constable
 M. questions.

So Constable P. wasn't upstairs very long. You know, I don't know how many minutes it was, but it wasn't very long. And he came down, and he said, so she said that she sent away the movers and that she is going to be back on Monday with the money and the movers. And I said, well, I could have told you that.

And at this point Constable P. was extremely upset. He said, well, why didn't you tell us that instead of wasting our time? And I said, quite calmly, I said, well, if you had been asking the right questions, I would have got to it. I was busy not answering the questions you weren't entitled to.

And so they sort of looked at each other. And at this point Constable P. started -- he raised two issues. He raised the issue of the ... Ms. B. said you went into her suite without her permission.

...

... And so they start hammering me, well, you know, you didn't have permission; that could be a trespass. And so now they start interrogating me about this alleged trespass that happened.

And then I said, well, come on, an electric heater; you are not supposed to leave a space heater on unattended. And I said it's an old house; you know, old houses have old wiring. Oh, is it unsafe? And they started drilling me whether or not we had unsafe premises.

...

.... So they started sort of drilling me about that

So finally, this sort of line of inquiry; the trespass and the heating element and the unsafe premises; you know, you keep a dangerous house; this ended after a few minutes. And I would say it was mostly ... Well, it was half Constable P. and half -- he kind of came alive at that part of the interview. That was when he spoke more than he did earlier on.

So finally, the constables sort of looked at each other. And again, I was leaving again. I was back to my old spot in the hall right by the bookcase. And the constable was -- they started to look at each other like, you know, okay, nothing left to do here, and they started leaving.

And that's where I started asking questions. I said by the way, before you go, I absolutely have to get your identification numbers. So I asked for identification numbers.

And Constable M. answered, no, we don't have to give them to you. And I remember saying -- and this is where my sort of fairly cool demeanour got a little more tense. I said in a sort of slightly exasperated tone, what do you mean you don't have to give me your identification numbers? I let you in my house on the assumption that you're police officers. What do you mean you don't have to? You are police officers, aren't you? And Constable M. said, yes, we are police officers. I said well, then you have to provide it to me.

Now this went on for several minutes; like two or three minutes probably; this whole debate about whether or not I was entitled to the numbers. And at one point, Constable M. said, well, we have to give it to the Complainant Ms. B. , but we don't have to give it to you.

And I thought that can't be right. And I said, no, that can't be right. You have to give it to anyone who asks for it; especially someone that has let you in the house on the assumption that you are police officers.

And . . . I should point out that my -- you know, I hadn't even been advised of my right to counsel or my right to silence or my right against self-incrimination or anything like that. It was just . . .

So, finally she said, and she kind of slipped it in, well, we don't have to give it to anyone who is too lazy to look and read it off our epaulettes. Now fortunately, I knew what the word 'epaulette' meant. And Constable P. who was standing on the landing, . . . actually had his shoulder towards me. I guess it was his way of saying, you idiot; there's the number right there. And you can't really have said they had been concealing it, because after all it was facing me.

Now on that bookcase, there's usually a bunch of papers and stuff. So I grabbed a pen . . . And I had the pen in my pocket, and I grabbed a piece of paper and wrote down Constable P. 's number.

And while I was doing this, Constable M. turned away, because she was standing right in the door. . . . So she was standing sort of right in the door. She turned to go out the door, and Constable P. followed.

So the two of them just bolted. They just left. So I followed them. And I remember -- I do remember slamming the door a little harder than I usually slam the door when I followed them out on to the porch.

So I followed them down the sidewalk. So this was on November 16th. It was around, like, 2:20, 2:30, 2:40; sort of in that range. I followed them down the sidewalk. I managed to sort of swing around Constable M. and I got her number too on this piece of paper.

So I followed them. And at the sidewalk, Constable M. stopped and gave me a real dirty leer, a sort of a stare; like, a kind of . . . But I knew that I was on the public sidewalk. I knew I wasn't doing anything wrong. I was just walking around.

So then I got the number of the car from the side. And then I went eastward toward that big tree on the boulevard to get behind the car, so that I could get the license plate number of the car.

So I went back there and got the license plate number. And the constables -- I don't think they said anything to each other. But as they were climbing into the car, Constable M. yelled at me, we're going to report you to the Law Society; like that. And I think I almost laughed. I think I -- because it was just on the tip of my tongue to say for what? But they got in the car, slammed the doors, and sped off. (Evidence: p. 41, l. 25-p. 50, l. 4)

Mr. B. described his appearance that day:

So, I should describe one thing about my appearance that day. That was 1996 and just to point out how I looked at the time. I had fairly long curly hair; probably fairly frizzy. It was Saturday. It wasn't a work day for me. And I was probably quite unkept and unshaven and didn't look . . . I guess the word is 'lawyer'. I didn't look quite like I look today. I don't know how to state that." (Evidence: p. 50, ll. 5-13)

Exhibit 3, the printout of the Call History is instructive as to the length of the above described incident. The two peace officers arrived at X ADDRESS at 2:07 p.m. At or shortly before 2:15 p.m., the assistance of Sergeant D. B. was requested by Constable P. By 2:19 p.m., Sergeant B. had attended X ADDRESS had been advised his assistance was no longer required and was back in service. According to Constable M. 's

evidence, Sergeant B. 's assistance was no longer required after Constable P. spoke to Ms B. and ascertained that Mr. B. and Ms B. had previously resolved their dispute. So, the total time between the two constables arriving at the scene, Constable P. returning downstairs after ascertaining that the dispute between Mr. B. and Ms B. had been resolved, advising Sergeant B. that his assistance was no longer required and Sergeant B. notifying dispatch that he was back in service was 12 minutes. During these 12 minutes, Mr. B. testified that he spent "several minutes" looking for the Certified Status of Title. Constable M. testified that she and Constable P. left the scene several minutes later.

In his letter of complaint, Mr. B. after describing the arrival of the two constables and their entry into X ADDRESS stated the following:

The two constables asked me who I was and, more or less, what was going on. I explained the foregoing. (Emphasis added by the writer)

The "foregoing" as set forth in Mr. B. 's letter of complaint contains, *inter alia*, the following:

On October 30, 1996, we had given our then-tenant K. B. notice to move out by December 1, 1996. Since both she and we felt that the living

arrangement was not working well (and she was going to give us notice herself anyway), relations remained amicable between us. However, after four polite requests for November's rent and Ms B. 's outstanding share of past months' utility bills, it became clear to me and my co-owner that she did not have *any* intention of paying us. Since we did not know where we could ever find her after she left our home, this was of concern to us.

In the early afternoon of Saturday, November 16, Ms B. informed us that she was moving but that she would come back and pay the rent. Since she had had ample opportunity to do so, we believed that she would not return. When the two movers arrived with their truck, I went out to talk to them and Ms B. on the porch. I told them that I may not be able to stop Ms B. from removing her possessions, but that as she had not paid her rent, I no longer considered her allowed to invite people into my home. I told them that as a property owner, I would consider them trespassers if they helped her move her things from her rooms up to the front gate - beyond that I had no rights. I told the movers, if Ms B. could produce a receipt signed by either me or my co-owner, then they could be sure they were not trespassing. Of course, she could not. Ms B. then said that she had called the police and been told that I had no right to seize her things. I said that I was not seizing anything, I was just withholding my permission for people not invited by me to come onto the premises. I apologized to the movers for the hassle. They were quite understanding and went out to their truck to wait.

Ms B. now again called the police. Eventually, a Constable S. (*sic?*) telephoned me. I told him what I told the movers. He said that he would have to call the police to prevent a breach of the peace. I told him there was no danger of that. He seemed to have it in his mind that I was seizing Ms B. 's possessions, which I was not. After he said he would have to send out a cruiser car to my house, I told him that it was unnecessary but that he should do whatever he thought he had to do, whereupon I told Ms B. upstairs and the movers outside that the police may be attending.

Ms B., apparently after talking to Constable S. again, came down ten minutes later and told me that she had sent away the movers and that she would return on Monday, November 18, 1996, with the rent money and the movers. I told her that would be alright. I add only that all parties concerned were quite civil up to this point. Then ten minutes later the two constables whose conduct is the subject of this complaint arrived.

In fact, Mr. B. DID NOT tell the two constables that Ms B. "came down ten minutes later and told me that she had sent away the movers and that she would return on Monday,

November 18, 1996, with the rent money and the movers. I told her that would be alright" and that "all parties concerned were quite civil up to this point".

Mr. B. then sets forth in his letter of complaint the further conversation he had with the two constables:

I said that I was not sure that I could detain Ms B. from moving her stuff but that I could deny her invitees access to our house. I said that I had not and would not do anything physical to restrain anyone, but that I was irrevocably withholding my consent to let the movers enter. I said that if they, the police, were to *force* me to let them in, I was still withholding my permission but would do nothing to stop them. However, I said that if they did so, I would sue Ms B. the movers and the Winnipeg Police jointly for trespass because the police do not have the legal right to grant anyone permission to enter the premises against the landowner's wishes. Since Ms B. apparently had no intention of paying the rent and was in all likelihood going to disappear, the others would end up paying for the wrongful entry. They said that the police have certain immunities. I countered, not for wrongful entry. They said that they had only come to keep the peace and that they were not interested in the civil dispute. I said that it was their decision whether or not to permit the movers in - and that I would then seek a civil remedy.

After an exchange between Constable M and Mr. B. concerning his identity, Mr. B. offered to find and produce his title to X ADDRESS He did so. In his letter of complaint, Mr. B. sets forth a summary of some further conversation:

... the female constable and later the male constable started questioning me about the particulars of the civil dispute. - - - This discussion also went on for a few minutes. They asked if we had contacted the Residential Tenancies Branch. I said that the other owner had phoned during the week

and that an official told her that, because of the living situation that *The Residential Tenancies Act* does not apply to our situation. If so, then *The Landlord and Tenants' Act* applied, I said, including the remedy of distraint, which is what I thought I was exercising with respect to Ms. B. 's invitees.

On cross-examination, Mr. B acknowledges having these exchanges. (Evidence: p. 66, l. 11-p. 69, l. 11)

Throughout this entire conversation or exchange, which began when the two constables arrived at X ADDRESS and ended when Constable P. went upstairs to talk to Ms B. Mr. B. DID NOT tell the two constables that he and Ms B. had amicably resolved the issue between themselves.

It was Mr. B. 's position that most of the above statements he made and the information he supplied to the police were made in answer to questions asked of him by the two police constables. On cross-examination, the following question was asked and answer given:

Q.? You make it sound in your complaint as though the officers were giving you one question after another and not giving you an opportunity to tell them that you had an agreement with Ms. B. ; that's the way you make it sound; is that correct?

A. That's more or less the way it was, yeah. (Evidence: p. 65, ll. 13-20)

I categorically reject this as the reason why Mr. B. did not tell the two constables about his agreement with Ms B. First, as conceded by Mr. B., upon their arrival at X ADDRESS the two constables asked him "what was going on" and Mr. B. did not allege, nor, in fact, was he constrained in offering an explanation of "what was going on". He supplied much background information to the two constables but, as I previously stated, did not provide the important fact that his dispute with Ms B. had been amicably resolved. Second, no matter what the conduct and demeanour of the two constables was during their questioning of Mr. B. his letter of complaint and his testimony clearly shows that he was not cowered by the two constables. To the contrary, Mr. B. was "playing lawyer" with the two constables. He was using his knowledge of the law to frustrate the two peace officers, who were there, admittedly, to prevent a breach of the peace. The following questions and answers, on cross-examination, are illustrative of this fact:

Q. And in fact, you knew when the constables were there, and you had this lengthy conversation with them about, you know, different things about the movers and all that, you knew that they were there to prevent a breach of the peace, didn't you?

A. Yes, that's what they said. (Evidence: p. 60, ll. 18-24).

Q. But you knew that there had been an arrangement, right?

A. I had talked to her, yeah.

Q. Okay, and that she was going to pay you on Monday, and then move out, right?

A. Yes; no consideration for that promise, but nonetheless, I did talk to her about that.

Q. That's fine. And therefore, that this matter had been resolved?

A. I thought it had been resolved. (Evidence: p. 61, l. 16-p. 62, l. 2)

...

Q. And you said that they were not asking you the right questions. I'm going to suggest to you that you really let them fumble their way through this, didn't you?

A. I think . . . What does that mean? They're trained to walk into a place and ask questions and get at the truth, and they didn't do that.

Q. And you weren't going to give them the answers that they needed until they asked you the right questions; isn't that right?

A. I have no duty to give them any answers. I only decided to give them answers that I felt like giving them. I had no duty at all. . . . (Evidence: p. 62, l. 15-p. 63, l. 4)

...

Q. I simply asked you --

A. Yes.

Q. -- you weren't about to give them the right answers?

A. I didn't want to mislead them in any way. I simply didn't want to give them answers; that's correct (Evidence: p. 63, ll. 10-16)

Part of Mr. B. 's testimony on direct examination is also illustrative:

So Constable P. wasn't upstairs very long. You know, I don't know how many minutes it was, but it wasn't very long. And he came down, and he said, so she said that she sent away the movers and that she is going to be back on Monday with the money and the movers. And I said, well, I could have told you that.

And at this point Constable P. was extremely upset. He said, well, why didn't you tell us that instead of wasting our time? And I said, quite calmly, I said, well, if you had been asking the right questions, I would have got to it. I was busy not answering the questions you weren't entitled to. (Evidence: p. 42, l. 14-p. 43, l. 4).

If I am wrong in my conclusion that Mr. B. was "playing lawyer", then I would conclude that Mr. B. was bereft of all common sense in his dealings with the two constables and was overcome by his unwarranted suspicion that the two constables were present to aid the movers (he had previously been told by Ms B. that she had sent the movers away) in removing Ms B.'s possessions.

Evidence of Mr. B.'s unwarranted suspicion can be found in the following testimony:

Q. And in fact, you knew when the constables were there, and you had this lengthy conversation with them about, you know, different things about the movers and all that, you knew that they were there to prevent a breach of the peace, didn't you?

A. Yes, that's what they said.

Q. Right. And at this time you had an arrangement with K. B. ? You knew what the arrangement was; that the movers had gone and that she was going to come back on Monday, pay the rent, and move, right? You knew that?

A. I knew what we had agreed to. I wasn't sure if she would actually perform her side of it. Because if you look at the photograph on page B2, there's a big spruce tree in our front yard. It's a big Colorado Blue. And the moving truck had been parked sort of to the right of that photo. And so looking out my front window, where I was making my phone calls, I couldn't see if the truck had left or not. I thought I had been double-crossed actually. (Emphasis added by the writer) (Evidence: p. 60, l. 18-p. 61, l. 15)

Prior to arriving at a mutual understanding with Ms B.

Mr. B. spoke to Constable S, on the telephone:

So I said, look -- because he kept threatening to send a cruiser car -- I said if you want to send a cruiser car. There's no reason to send a car, because nothing has -- there's no breach of the peace here. But if you want to send a car, that's fine. I'm withholding my permission. And I'm not going to do anything. I haven't done anything, but that's fine. (Emphasis added by writer.) (p. 31, ll. 17-25)

Mr. B. then testified concerning subsequent events, before the two constables arrived.

So I told K. this. And I have to say she was an amiable personality. There was no swearing on either side. It was all very civil; the way it ought to be.

So I went out to talk to the movers. And I said to them, well, you know, I talked to this constable, and they said they might send a car. And I'm really sorry to do this to you guys because it's the middle of month when you're moving. It's a Saturday in the middle of the month. I'm sorry to tie up your afternoon like this.

And they were quite -- and they said no problem, man; like, that's cool. You know, you can do that. They didn't want to go against my permission, go and help her move.

So, I talked to them for a few minutes and went back into the house. And I must have been on the phone with my lawyer friend several times that day just telling him what was happening.

And then all of a sudden, K. came down and said, 'I'll be back Monday with the money and the movers. And I said, great; that would be excellent. And she went upstairs and I thought that was it. So I called my friend D. again and said it looks like . . . It looks the low-risk tactic did work. (Evidence: p. 32, l. 1-p. 33, l. 3)

A. I didn't know that it had been resolved. Because I thought why are the police still coming if the thing is resolved.

Q. That's --

A. I--

Q. -- not my question.

A. -- didn't think it was resolved. If you are asking what's in my head at the time when it's going on, that's in my head. I've been double-crossed, and I'm being ambushed. (Evidence: p. 64, l. 25-p. 65, l. 10)

A. I was trying to leave. I was expecting the movers to come back. I was trying to get out and get on the phone to D. B. (ph). I was wanting -- I just figured it was going to come down to a trespass action. They were going to escort the movers on. (Evidence: p. 63, l. 21-p. 64, l. 1)

A. And I believed that they were going to escort the movers on; that's right. (Evidence: p. 67, ll. 5-6)

. . . . But you have to understand, I didn't understand that the movers were not going to come back or were not in fact still cruising around the block or just waiting in front. I didn't know that. (Evidence: p. 70, ll. 9-14)

Q. No. And you didn't go check to see if the movers were outside, did you?

A. They were in my way. I couldn't.

Q. Right. You were quite confident that the movers had gone and that you had resolved this problem, didn't you?

A. I wasn't sure. I didn't know. Why are the police here if the movers are gone?

Q. Well, once --

A. You know, you're in the middle of this, and you are thinking what's going on here? Why am I in the middle of this?

Q. And doesn't that beg the question then, sir; doesn't the (sic) beg the very problem that you have it in your mind that the movers may still be there; then there's a definite need for the police presence to prevent a breach of the peace?

A. Not at all. I'll get to that in argument actually.

Q. You think that if those movers are waiting there, a half a block away, that the police should just leave?

A. No, if the movers are there, and they are going to escort the movers on, even though there's no reason to do it, that's why the police would have come. There's no other reason why they would have come. Because there was no reason for them to come. (Evidence: p. 70, l. 21-p. 71, l. 25)

In this regard, I note this evidence to be inconsistent with what Mr. B. stated in his letter of complaint. At p. 4 of his letter, the last sentence of complaint No. (3) states: "I did not even get the chance to get in that the movers had already left".

Mr. B. knew that a cruiser car might be sent out to prevent a breach of the peace. He knew that the cruiser car had been dispatched prior to Ms B. advising him that she would return two days later with the money and the movers. Mr. B. knew that that the two constables who had arrived at his residence were there to prevent a breach of the peace. Neither constable threatened to assist the movers (if the movers were present) or Ms

- B. in removing her possessions. There was no rationale for Mr. B. thinking he was being "double-crossed" or "ambushed".

On cross-examination, Mr. B. was asked the following question and gave the following answer:

Q. And when Constable P came down the stairs and said why didn't you tell us all this, I'm sure you can understand his frustration at that time in the fact that you had not told him that things had been resolved? You can understand that frustration, can't you?

A. Certainly. (Evidence: p. 62, ll. 7-14)

After listening to Mr. B.'s testimony in this regard, I share Constable P.'s frustration.

Further evidence of Mr. B.'s lack of common sense and overly legalistic approach can be found in the following exchange on cross-examination:

Q. All right, by not giving the officers the full story and allowing them to fumble around and ask what you say are all the wrong questions, I'm going to suggest to you that you were not dealing very fairly with these officers, were you?

A. I would have thought they would go talk to the complainant first and then come talk to me. That's . . . I don't think I was dealing unfairly. I have no duty to the police. I exceeded what -- and I have maybe a moral duty, and I'll get to that in argument. But I have no duty to the police.

Q. What is --

A. I told them who I --

Q. -- your moral duty?

A. -- am. I told them I own the building; that I'm the landlord. That's -- I gave them more than I needed to.

Q. What is your moral duty?

A. I'll get to that in argument.

Q. Do you mind answering that question right now?

A. What is my moral duty?

Q. Yes, what is your moral duty? You referred to a moral duty in your evidence. I want to know what that is.

A. I don't even understand exactly I mean I'm referring to a quote that's in a case. I don't even know what the moral duty is.

Q. Well, you said that you had a moral duty.

A. I said I "may have" had a moral duty.

Q. Well, what may that moral duty have been, sir?

A. To tell them -- I just gave them who I -- what my identity was. So at least they knew I was not some guy that just sort of snuck in the house and was pretending to be the landlord. I told them who I was.

Q. So you understand that there is a need when officers come to a breach or a potential breach of the peace type of case to find out who the people are; you understand that, don't you, sir?

A. After talking to the complainant, there's probably a need, yes. (Evidence: p. 72, l. 27-p. 74, l. 20).

One further exchange between Mr. McKenna and Mr. B. is illustrative of Mr. B.'s mentality on November 16, 1996:

The officers after finding out that the matter had been resolved, and it is a fact that K. B. had told you that. Your evidence was this, you said, the officers realized that there was nothing left to do here, and they began to leave.

Now I'm going to suggest to you, sir, that had you helped the officers at the very beginning by giving them the information that you were withholding from them, that's exactly what would have happened?

They may have gone to confirm it with Ms. B just to make sure that that's in fact what happened; that she is okay, but they would have left very quickly thereafter; isn't that true?

A. I don't know if they would have. I can't speculate as to what's going on in their heads. I sort of doubt it given the way they behaved.

Q. You doubt it?

A. I doubt it that they would have left.

Q. What do you think they would have done? They came there to prevent a breach of the peace. They don't know you at all. And there is no breach of the peace, and you tell them that right off the bat. What do you think they would do?

A. I tell them I'm not going to do anything. But if you escort the movers on -- because in my mind, the movers were coming. They were either there or coming. So if you escort the movers on, I'm going to sue everybody for trespass, and I started walking away and withdrawing to go back to the living room.

I wasn't in their way. They could have left at any time. They could have gone to see the complainant at any time. I was not in their way. There was two of them. They could have talked one to each. They didn't do that. They just hung around and asked a bunch of questions and didn't take no for an answer. They repeated the questions with a bullying tone. (Transcript: p. 74, l. 25-p. 76, l. 18)

Mr. B. believed that he was entitled at law to refuse entry to any of Ms B. s invitees; that anyone who entered the premises without his permission was a trespasser. For the purpose of this matter, I need not decide whether Mr. B. was correct in law. I will assume, for the purpose of this matter, that he was correct in law that he could refuse entry to any of Ms B. 's invitees.

The two constables attended to prevent a breach of the peace. Notwithstanding Mr. B's equivocation on the issue, Mr. B initially knew that was the reason for the police attendance. If he subsequently convinced himself otherwise, it was because he succumbed to his unreasonable suspicions. As I previously stated, there was nothing in the conduct of the two police constables which would lead a reasonable person to conclude that the two police constables were there to assist Ms B in an attempt to remove her property without paying the rent due.

Mr. B. also equivocated on the issue of whether or not he believed the movers had departed the scene. In his letter of complaint, which was compiled from notes which he made shortly after the event, and which Mr. B. stated represented his best memory of the event (Evidence: p. 53, ll. 1-5), Mr. B. expressed no such uncertainty. He stated: "I did not even get the change to get in that the movers had already left". (emphasis added by the writer)

I find that Constable M. and Constable P. attended X ADDRESS on November 16, 1996, to investigate a breach of the peace or to prevent a breach of the peace. At all

times, they were acting in the course of their duties as peace officers. During the execution of these duties, the constables asked Mr. B. a number of questions and asked him to produce a piece of photograph identification, namely, a driver's licence.

It is Mr. B.'s position that he was not required by statute or common law to answer any of the constables' questions or to produce any photograph identification. He was exercising his right to remain silent. However, Mr. B. did volunteer answers to some of the questions which Mr. B. believed were relevant to the police attendance. Other questions Mr. B. refused to answer and he refused to produce his driver's licence, if he had one.

The crux of Mr. B.'s complaint lies in the following submission made by him:

And what I really resent about this whole incident wasn't that the questions were asked, but they were repeatedly asked, and it was not accepted . . . the "no" was not accepted. "No" did not mean "no" to these constables. And that's why I made the complaint. (Transcript: p. 224, ll. 14-19)

Further in Mr. B.'s submission, he stated:

I had liberty. And the badgering and the repeated questions and not accepting the "no" and that's what this case is about is the constable didn't accept "no". (Transcript: p. 228, ll. 6-9)

As to what constituted "oppressive conduct or language", Mr. B submitted:

But I think what takes this into "using oppressive or abusive conduct or language" is the fact that they tried to compel me -- not physically; I'll grant that -- but they tried to compel me to do things and to say things that I didn't want to say and that to me is not a trivial matter at all

And so I think the thing that elevates it into the more serious oppressive or abusive conduct is the not accepting the no and forcing me to back down from my legal rights.

Because they were trying to take rights away from me. That's the way I experienced it. (Transcript: p. 234, ll. 3-9 and ll. 18-24)

Mr. B. submitted that it was "the tone of voice" that was used by Constable M. that was oppressive.

Mr. B. further submitted that the fact that the two constables did not leave the premises immediately after being informed by Ms B. that the issue had been amicably resolved but rather remained on the premises and asked him further questions amounted to oppressive conduct.

In summary, Constable M. and Constable P. attended X ADDRESS on November 16, 1996, to investigate or prevent a breach of the peace. It was their legal duty to do so. In so doing, the constables asked Mr. B. a number of questions

he claimed to be exercising his right to silence. He was entitled to exercise that right. His conduct was obstructive because of his selective and misleading exercise of his right to silence.

On cross-examination, Mr. McKenna questioned Mr. B. about his "moral duty". In answering that question, Mr. B. was evasive and claimed not to know what his moral duty was. Yet, in his submission, Mr. B. was quite clear concerning a moral duty to police officers. He stated:

It seems to be quite clear that although every citizen has a moral duty, or if you like a social duty, to assist the police, there is no legal duty to that effect. (Transcript: p. 222, ll. 13-16)

In the circumstances of this case, Mr. B. the police and society would have been better served if Mr. B. had exercised his moral duty rather than his legal right. At least, that is the conclusion one must arrive at if common sense is applied to the circumstances of this case.


If Constable M. asked questions or repeatedly asked questions of Mr. B. it was in the course of her duties to investigate a breach of the peace. If her demeanour and tone of voice showed frustration, agitation or exacerbation, it is understandable. While we must hold our police officers to a high

standard of proper conduct, we must be careful not to raise the standard to a level attainable only by saints and robots.

I need not decide and do not decide whether Constable M. [redacted] 's conduct was discourteous or uncivil.

In conclusion, I find that Constable M. [redacted] did not use oppressive conduct or language towards Mr. B. [redacted] on November 16, 1996 and I dismiss the complaint.

DATED this 10th day of February, 2000.


Arnold J. Conner
Provincial Judge