

**IN THE MATTER OF: The Law Enforcement Review Act
Complaint # 5066.**

**AND IN THE MATTER OF: An Application pursuant to s. 17 of
The Law Enforcement Review Act
C.C.S.M., c.L75.**

BETWEEN:

J. G.,)	
)	Self-represented.
Complainant,)	
)	
- and -)	
)	
CONSTABLE K. S.,)	Josh Weinstein
BADGE NO. ,)	Counsel for the Respondent.
)	Hearing dates: May 8 and
Respondent.)	9, 2006.
)	Decision delivered: June 21,
)	2006.

MEYERS P.J.

[1] Referral of this matter has been made by the Law Enforcement Review Commission to a Provincial Judge to determine the merits of a complaint made against Constable K. S. by Jozef Grochocki, alleging the commission of the following disciplinary defaults, namely

- (1) That on or about February 11, 2000, the Respondent abused his authority by using unnecessary violence or excessive force on the Complainant contrary to s. 29 (a) (ii) of The Law Enforcement Review Act, and
- (2) That on or about February 11, 2000, the Respondent abused his authority be using oppressive or abusive conduct or language on the Complainant contrary to s. 29 (a) (iii) of The Law Enforcement Review Act

[2] The hearing of this complaint pursuant to s. 17(1) of The Law Enforcement Review Act, having been referred to Chief Judge Raymond Wyant on January 12, 2004, was originally scheduled for May 16 and 17, 2005. Difficulties ensued between the Complainant and two lawyers, who were appointed to represent him by Legal Aid Manitoba, which necessitated a rescheduling of the matter to the month of May 2006.

[3] When on February 14, 2006, the second of the two counsel retained by the Complainant sought and was granted permission to withdraw, Mr. G. was advised that there would be no further adjournment granted him, and that he could either retain new counsel or personally prosecute the matter. The concern voiced was that the delays occasioned were not only unfair to the Complainant but to Constable S., whose reputation was being called into question.

[4] A further complication arose when it was learned that even though Mr. G. had difficulty with the English language, that unless he retained an interpreter at his own expense there were no financial resources available for this assistance.

[5] Mr. G. attended without counsel on May 8, 2006, and undertook to represent himself. At the start of the second day of the hearing he requested an adjournment to retain counsel, but this request was denied and he continued his personal prosecution of the matter.

THE ALLEGATIONS

[6] The Complainant alleges that on February 11, 2000, while taking a shower, his wife called to him that there were police at the door. He told her to tell them "to get out." After finishing his shower he claimed he heard banging at his apartment window. He dressed and on opening the door he saw two officers and told them to "fuck off." Before closing the door he pushed one of the officers, after which Constable S. and his partner grabbed his arms. According to the Complainant, the Constable swore at him, calling him among other things "an asshole." He claims that the police then handcuffed him, put him in a cruiser car and then drove him to the police station. By being handcuffed he claimed that his wrists were bruised. He further alleges that on arrival at the station Constable S. shook him so hard that he fell to the ground.

[7] He claims that on being taken into the station interview room the officers split up and he was left alone with S., who further abused him by banging his (the Complainant's) head on the table causing swelling to his face.

[8] Mr. G. further alleges that Constable S. and his partner were sent to his residence not only on the day of the incident of which he complained but one day earlier with the sole purpose of getting him agitated and goading him into fighting, and that they were sent by Officer D. C., who according to him has since been fired. As well, Constable S. took from his pocket a tape recorder on which was recorded the derogatory comments and incriminating evidence of the assault on him by the officer.

[9] These then are the allegations of physical abuse and verbal abuse offered by the Complainant against Constable S.

[10] Set out below are the facts as gleaned from the evidence presented at the hearing.

THE FACTS

February 10, 2000

[11] To fully grasp what occurred on February 11, 2000, which is the date on which the incidents leading to Mr. G.'s complaint, it is necessary to consider the events of February 10, 2000, when the Complainant was stopped for speeding by Constable S. and his partner Sergeant J.C.

[12] The two detectives were in a cruiser car on Midwinter Avenue in the City of Winnipeg, Manitoba, when the Complainant passed them at a high rate of speed. They clocked him for two kilometers before causing him to pull over. As one might expect the detectives did not have either traffic tickets or provincial offence notices in their automobile, and rather than inconvenience Mr. G., who voiced his displeasure at being stopped in the most common of gutter language, allowed him to go on his way. They did advise him that they would be serving him at home the next day with the proper offence notice. This was their only contact with the Complainant that day.

February 11, 2000

[13] S. and C. did attend at Mr. G.'s residence at 110-607 Leila Avenue in Winnipeg, Manitoba, on February 11th as they said they would. After knocking on the door of the suite they were met by S. G., wife of the Complainant. They identified themselves by name, showed their badges and asked for her husband. She told them that her husband was in the shower and asked them to wait. She then closed the door. Moments later they heard Mr. G. yelling, and became concerned.

[14] Constable S., who at the time had been on the City of Winnipeg police force for some six years, became concerned by what he thought was a domestic dispute, and went outside and around the building to see if by looking in the window of the apartment he could determine what was taking place. Not being able to make a determination he returned back to the suite. The officers again knocked on the door, which was opened this time by the Complainant, who was in a fighting stance with fists clenched.

[15] After asking them what they wanted, G. yelled "Fuck you," lunged at C. and with a closed right fist hit the officer on the chin. G. who would only admit to pushing C. and not punching the officer, then pushed C., causing him to reel back and then attempted to close the door on the two detectives. S. stuck his foot into the door jamb preventing it from closing. At this point the two detectives were in the suite trying to control the aggressive Complainant, who was challenging them not only verbally but with arms swinging to fight him. While the officers were attempting to contain him, G. struck Constable S. on the right cheek.

[16] The officers tried to reason with the Complainant and even though he was being advised of his rights he would have no part of it, and let it be known by shouting "No fucking way. If you want to fight, we fight." Even the attempts of his wife for him to calm down went unheeded, as he again lunged at Sergeant C., Constable S. managed to grab the Complainant's right arm and Sergeant C. tried to secure his left arm. However, the strength of Mr. G. was proving too much for them, and they were having a difficult time handcuffing him. Mr. G., his arms flailing again hit Sergeant C. in the face. The officers were concerned for their safety, at which point Constable S. managed to get to the phone in the apartment and call for backup assistance.

[17] It was only when the children of the Complainant appeared on the scene that he calmed down to a point where he could be handcuffed. By this time four more police officers had arrived to assist their colleagues. Mr. G.

was escorted to a police car, where his rights were again given to him. He asked for and was allowed to take his tape recorder with him.

[18] At the District 3 police station the Complainant was paraded before the presiding Sergeant to make sure that he had no visible injuries, and then was taken to an interview room by both arresting officers. They offered to remove the handcuffs if he was prepared to act in a civil manner, to which he replied, "No, I beat shit out of you, you cocksucker." It took more than 20 minutes before Mr. G. calmed down and the cuffs were then removed.

[19] Constable S., as requested by the Complainant, telephoned the law office of Mr. Robert Olynyk. He was unsuccessful in speaking to Mr. Olynyk, but did advise his assistant of Mr. G.'s arrest and that he would be released that day. Mr. G. refused to sign the promise to appear form but was allowed to leave the station. As he lived only minutes away from the Hartford Avenue station, the officers, still concerned about their safety, declined to drive him home but offered to telephone for a taxi to take him home. He chose to walk home.

[20] That same day Mr. G. attended at the Redwood Medical Centre and Dr. Roman Koczanski in a letter dated January 31, 2002, reported as follows to the Law Enforcement Review Agency:

"J. G. presented to my office on February 11, 2000 and complained of alleged physical abuse by the police. He stated he was cuffed and allegedly thrown against the wall. He complained of having struck his head against the wall and he was suffering from headache. When asked, he denied any loss of consciousness from the head injury.

On examination he had redness on his right wrist, linear 0.5 cm long all around the right wrist, on his left wrist, he had erythema measuring 2 x 4 cm at proximal region of his second and third metacarpals. His pupils were round and properly reacting to light, his ocular movements were normal. He had left sided parietal tenderness, there was no bruise in that area. The left temple and over the left TM joint, there was a slight swelling, no bruising was seen at that time.

I diagnosed him with head contusion and contusion to both wrists. Mr. G. was advised to take Tylenol extra strength for pain if needed. Information about head injury and possible symptoms was provided to the patient as it was an advise to seek medical attention in case of appearance of new signs or symptoms.”

[21] Mr. G., who was charged with assault of a peace officer and speeding, entered pleas of guilty to both charges. He was granted a conditional discharge on the Criminal Code offence and fined for the Highway Traffic Act violation.

THE STANDARD OF PROOF

[22] If the complaint against Constable S. is to succeed it can only succeed if the provincial judge satisfies himself or herself that there is clear and convincing evidence that the officer has committed the disciplinary default. This is the standard of proof as required by subsection 27(2) of the Law Enforcement Review Act, R.S.M. 1987, c. L75.

[23] While a Complainant may feel that this is too onerous a burden to bear, the reasoning for the requirement of this high standard of proof is as stated by my colleague Chartier J. in the matter of K. A. A. and Cst. S. D. and Cst. R. K. dated October 26, 2000:

“.....because the consequences to the careers of the police officers resulting from an adverse decision are very serious. 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.”

[24] The meaning of the phrase “clear and convincing evidence,” was similarly defined in *Huard v. Romualdi*, 1 P.L.R., 1993, page 217, and requires going beyond a balance of probabilities.

THE FINDINGS

[25] I have no difficulty finding that where the testimony of the Complainant and that of S. G., his wife, come into conflict with the testimony of the Respondent Constable S. and his partner Sergeant C., that

the testimony of the officers is more persuasive and more credible in determining the outcome in this matter.

[26] There is little doubt but that Mr. G. was the author of his own making and misfortune, and that no blame can be attached to Constable S. in the manner in which he and his partner dealt with the Complainant on February 11, 2000. If anything, Constable S. acted with admirable restraint in his confronting a man, who was intent on injuring both he and Sergeant C., and who provoked the entire scenario. The plea of guilty entered by Mr. G. to a charge of assaulting a peace officer and his subsequent conviction left him little room to satisfy his allegations against Constable S.

[27] In trying to prevent further assaultive behaviour by the Complainant, the officers managed to secure him by each grabbing one of his flailing arms and handcuffing him. The bruising of Mr. G.'s wrists was caused by his continued attempts to wrestle free of the cuffs. As for the slight swelling to the Complainant's face, I accept that it was not caused by any harm done to him by the officer, but rather by his swinging wildly in his efforts to injure both officers.

[28] Similarly, the allegation of Constable S.'s assault of the Complainant at the District 3 station is without merit. Mr. G. might well assert that he was alone in the interview room with the officer and was attacked. However, the testimony of both Constable S. and Sergeant C. is more credible. Why would any police officer risk being alone with Mr. G. after suffering his earlier abusive behaviour?

[29] If Constable S. did use abusive language, and I again question Mr. G.'s version in this regard, it is completely understandable that in the exigencies of the situation confronted by him that he could be excused from uttering the one swear word attributed to him.

[30] The Complainant has failed to meet the test as stipulated in s. 27(2) of the Law Enforcement Review Act. No unnecessary violence or excessive force was exercised against Mr. G. by the Respondent as contemplated by s. 29(a) (ii) of the Act. Nor did he use oppressive or abusive conduct or language as contemplated by s. 29 (a) (iii) of the Act.

[31] I find that the Respondent has not committed the disciplinary defaults referred by the Commissioner.

Dated this day of June A.D. 2006 at the City of Winnipeg.

MEYERS, P.J.