

**The standard of proof applied in police oversight hearings - legislation and jurisprudence  
Military Police Complaints Commission, October 2007**

	<b>Legislation</b>	<b>Jurisprudence</b>	<b>Standard of proof applied at hearing</b>
<b>The Supreme Court of Canada</b>	-----	<i>Dalton Cartage Company Limited v. The Continental Insurance Co.</i> , [1982] 1 S.C.R. 164, 1982 CarswellOnt 372. “There is necessarily a matter of judgment involved in weighing evidence that goes to the burden of proof, and <i>a trial judge is justified in scrutinizing evidence with greater care if there are serious allegations to be established by the proof that is offered... I do not regard such an approach as a departure from a standard of proof based on a balance of probabilities nor as supporting a shifting standard.</i> The question in all civil cases is what evidence with what weight that is accorded to it will move the Court to conclude that proof on a balance of probabilities has been established.”	-----
<b>Alberta</b>  Law Enforcement Review Board	<i>Police Act</i> , R.S.A. 2000, c. P-17  The Act is silent regarding the standard of proof required.	<i>Unrau</i> , LERB, March 2006, No. 003-2006 “ <i>misconduct is to be proven on a balance of probabilities</i> before the Board at first hearing”.  <i>Plimmer v. Calgary (City Police Service)</i> , 2004 ABCA 175 (CanLII).  <i>P.L. v. College of Physicians and Surgeons of the Province of Alberta</i> , 1999 ABCA 126 (CanLII).  <i>Ringrose v. College of Physicians and Surgeons of Alberta (No. 2)</i> (1978), 83 D.L.R. (3d) 680, [1978] 2 W.W.R. 534 at paras. 19-20. <i>Civil cases are proved by a preponderance of the evidence, after considering the totality of the circumstances including the gravity of the consequences of the finding.</i>	<b><i>Balance of probabilities.</i></b>
<b>British Columbia</b>  Office of the Police Complaints Commissioner	<i>Police Act</i> , R.S.B.C. 1996, c. 367, subsection 61(6) The adjudicator must decide whether each alleged discipline default respecting the complaint has been proved on the <b><i>civil standard of proof.</i></b>	<i>Jory v. College of Physicians and Surgeons of British Columbia</i> , (1985) B.C.J. No.320 (QL). <b>Cases provide no clear rule, a trier of fact should be convinced, more than persuaded. The test is more than a balance of probabilities. The standard of proof is “clear and cogent evidence”.</b> See also:  <i>J.C. v. College of Physicians and Surgeons of British Columbia</i> (1988), 31 B.C.L.R. (2d) 383 (S.C.B.C.).  <i>Pierce v. Law Society of B.C.</i> , [2002] B.C.J. 840.	<b>Intermediate civil standard of clear and cogent evidence.</b>
<b>Manitoba</b>  Law Enforcement Review Board	<i>Law Enforcement Review Act</i> , C.C.S.M, c. L75, s. 27(2) The provincial judge hearing the matter shall dismiss a complaint in respect of an	<i>SH and Det. Sergeant RH</i> (August 18, 2006) LERA, Complaint #6180.  <i>RJM v. Sgt P, Const. T</i> (2004) LERA, Complaint #5328.	<b><i>Clear and convincing evidence is required to meet the traditional civil standard of proof on a balance of probabilities.</i></b>

	alleged disciplinary default unless he or she is satisfied on <b>clear and convincing evidence</b> that the respondent has committed the disciplinary default.	<i>CN and Const. KL</i> (March 12, 2002) <i>LERA</i> , Complaint #2895.  <i>Mr. G v. Const. G and Const. B</i> (August 14, 2000) <i>LERA</i> , Complaint #3573.  <i>SW &amp; PK</i> (June 21, 1996) <i>LERA</i> , Complaint #3358.	
<b>New Brunswick</b>  The New Brunswick Police Commission	The current <i>Police Act</i> , S.N.B. 1977, c. P-9.2 is silent regarding the standard of proof. Discipline Regulation - <i>Police Act</i> , N.B. Reg. 86-49. Note: <i>An Act to Amend the Police Act</i> , will come into force in 2008, 32.6(1) on a balance of probabilities.	Sgt. Arsenault and Const. Secord v. Saint John Police Force (August 2007).	<b><i>Balance of probabilities. The degree of proof required to establish a fact by that standard may vary in individual cases to allow for degrees of probability.</i></b>
<b>Newfoundland</b>  The Royal Newfoundland Constabulary Public Complaints Commission	<i>Royal Newfoundland Constabulary Act</i> , 1992, s. 33(1) Adjudicator shall make a determination on the <b><i>balance of probability.</i></b>	<i>RNCPCC and Constable Krista Clarke, et al.</i> The Chair cites <i>Re Bernstein and College of Physicians and Surgeons</i> (1977), 15 O.R. (2d) 447 (Ont. H.C.), concluding that the standard had never been precisely formulated and that it must mean more than a mere mechanical comparison of probabilities independent of the belief in the reality of the factual occurrence of the alleged event. The proof must be clear and convincing and based on cogent evidence.  <i>Re: A Complaint by Brian Richard Nolan</i> (1994), <i>RNCPCC</i> .  <i>R v. Neary</i> (2000), 187 Nfld. & PEIR 142 (Nfld. C.A.).	<b><i>Balance of probabilities. The more serious the allegation, the more cogent evidence required to prove misconduct on a balance of probabilities.</i></b>
<b>Nova Scotia</b>  Nova Scotia Police Commission	<i>Police Act</i> , R.S.N.S. 1989, c. 348. Police Regulations Part IV-Police Review Board, s. 28(g) At a hearing of the Review Board the burden of proof shall be on the <b><i>balance of probabilities.</i></b>	<i>Kelly v. Burt</i> , Nova Scotia Police Review Board, November 05, 2004, File No. 03-0029. <b>The burden of proof shall be on a balance of probabilities, however, in disciplinary cases, where the charges and potential consequences of the findings are serious, clear and convincing evidence may be the required standard of proof.</b> If at the end of a tribunal hearing, on all the credible evidence, it has been proven that the events alleged probably occurred, the case has been proven. Even in disciplinary proceedings this standard of proof prevails... <b>However, the degree of proof required to establish a fact by a balance of probabilities is not the same in every case. The law recognizes degrees of probability.</b>  Notice of Review filed by Ron Corbin, October 29, 2003, File No. 02-0047.  Appeal filed by Const Wilms, December 17, 1978, NSPRB-95-0178.	<b><i>Clear and convincing evidence may be required. The law recognizes degrees of probability.</i></b>

<p><b>Ontario</b></p> <p>Boards of Inquiry, Ontario Civilian Commission on Police Services</p>	<p><i>Police Services Act</i>, R.S.O.1990 c. P.15, s.64(10) At the conclusion of the hearing if misconduct or unsatisfactory work performance is <b>proved on clear and convincing evidence</b>, the chief of police shall take any action described in section 68.</p> <p>Note: Will be Part II, s. 25(4) when Bill 103 is proclaimed.</p>	<p><i>Huard v. Romualdi</i> (1993), 1 P.L.R., 317 (BOI). <b><i>These are civil proceedings, therefore, the standard of proof is proof on a balance of probabilities. Section 97(1) speaks to the quality of the evidence necessary to meet that standard.</i></b></p> <p><i>However, see:</i></p> <p><i>Tackaberry v. Greig</i> (1993) Ont. Bd. Inq.: “The burden of proof is set out in the statute as ‘clear and convincing’ evidence. There must be weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to a fair and reasonable conclusion...”</p> <p>See also: <i>Norris v. Loranger</i> (1998) Ont. Bd. Inq; <i>Carmichael v. O.P.P.</i>, O.C.C.P.S., May 21, 1998; and <i>Lloyd v. London Police Service</i>, O.C.C.P.S. October 1, 1998.</p>	<p><b><i>Some support for balance of probabilities on clear and convincing evidence, however, more decisions have held clear and convincing evidence to be the standard of proof.</i></b></p>
<p><b>Quebec</b></p> <p>Police Ethics Commissioner Comité de déontologie policière</p>	<p><i>Police Act</i>, R.S.Q. 1977, c. P-13.1, chapter 12/2000, s. 89. The rules of the Code of Civil Procedure relating to the production of evidence, hearing and judgment apply.</p>	<p><i>Boulay c. C.D.P.</i>, CQ No. 105-80-000007-020, 23 decembre 2004.</p> <p><i>Dea c. Court du Quebec et al</i>, CS No 500-17-019023-046, 20 octobre 2004.</p> <p><i>Dupuis et Denis c. CDP</i>, CQ No. 500-80-002413-038, 17 septembre 2004.</p> <p><i>CDP c. Veronneau et Legault</i>, C-2004-3193-3, C-2004-3194-3, 27 juillet 2004.</p>	<p><b><i>Preponderance of the evidence, balance of probabilities.</i></b></p>
<p><b>Saskatchewan</b></p> <p>Saskatchewan Public Complaints Commission</p>	<p><i>Police Act</i>, 1990, S.S. 1990-91, c. P-15.01, s. 93 No finding of: a) contravention of the regulations governing discipline; b) unsuitability; or c) incompetence is to be made pursuant to this act <b><i>unless the alleged contravention, unsuitability or incompetence is proven on a balance of probabilities.</i></b> s. 56(5) The rules of evidence for all hearings conducted pursuant to this Part are the same as in civil cases in Her Majesty's Court of Queen's Bench for Saskatchewan.</p>	<p><i>Huerto v. College of Physicians and Surgeons of Saskatchewan</i>, 2005 SKQB 94 (CanLII).</p> <p><i>United Foods and Commercial Workers, Local 1400 v. Westfair Foods Ltd.</i>, 1999 CanLII 12287 (SKCA).</p>	<p><b><i>Balance of probabilities with a higher degree of proof required where serious allegations and consequences are at issue.</i></b></p>

<p><b>Canadian Forces Military Police</b></p> <p>Credential Review Board</p> <p>Canadian Forces Provost Marshal</p>	<p><i>National Defence Act</i>, R.S., c. N-4.</p> <p>The Act is silent regarding the standard of proof.</p> <p>Credentials Review Board Military Police Policy, 2000, no. 25 The Panel determination of whether a breach of the Code occurred shall be based on clear and convincing evidence of the alleged breach. This is the standard of evidence of the balance of probability, an administrative standard of proof.</p>	<p>MPCC-2000-55 and MPCC-2001-003 Notice of Action from the Canadian Forces Provost Marshal dated October 8, 2002. The Military Police Credentials Review is an administrative process, which is subject to judicial review. The Panel recommendations and the decisions made by the Canadian Forces Provost Marshal are based on the <i>administrative standard of proof</i>.</p>	<p><i>Balance of probabilities based on clear and convincing evidence.</i></p>
<p><b>Royal Canadian Mounted Police</b></p> <p>Adjudication board</p> <p>External Review Committee</p> <p>Commissioner</p>	<p><i>RCMP Act</i>, R.S., c. R-9, s. 1. Part IV, s. 45.12 (1)</p> <p>After considering the evidence submitted at the hearing, the adjudication board shall decide whether or not each allegation of contravention of the Code of Conduct contained in the notice of the hearing is <i>established on a balance of probabilities</i>.</p>	<p><i>Jaworski v. Canada (Attorney General)</i>, (2000) 255 N.R. 167, 25 Admin.L.R. (3d) 142, 181 F.T.R. 320. The adjudication board stated at the outset of its lengthy decision that the principles applied to identification evidence in criminal proceedings were applicable to this discipline proceeding, although <i>the standard of proof was lower, namely the balance of probabilities. However, because of the potential seriousness of the board's decision, Constable Jaworski would only be found guilty of misconduct if the evidence was clear and convincing.</i></p>	<p><i>Balance of probabilities, based on clear and convincing evidence.</i></p>