Citation: *Ribeiro v. City of Vancouver et al*
2004 BCSC 492

Date: 20040326
Docket: C992466
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Master Donaldson
In Chambers
March 26, 2004

BETWEEN:

Jose Augusto Ribeiro

Plaintiff

AND:

THE CITY OF VANCOUVER, POLICE SERGEANT LACON, POLICE SERGEANT BOUTIN, POLICE CONSTABLE DIMOCK, POLICE CONSTABLE BEZANSON, POLICE CONSTABLE GIBSON, POLICE CONSTABLE CHU, POLICE CONSTABLE STEWART, POLICE CONSTABLE SCALLY, POLICE CONSTABLE JACKSON, POLICE CONSTABLE ALFRED, POLICE INSPECTOR GREER and POLICE ACTING STAFF SERGEANT S. MILLER

Defendants

Counsel for the Plaintiff: C. Martin

Counsel for the Defendants: T. Zworski

Place of Hearing: Vancouver, B.C.

[1] **THE COURT:** This is an application for documents relating to a claim for damages resulting from two incidents which occurred on the 15th and 17th days of December in 1998.

[2] Counsel for the plaintiff advises that the plaintiff is a paranoid schizophrenic who, at the time of the incidents, was off his medication and suffering from his mental illness.

[3] Apparently, a community healthcare worker attended with two doctors and employees of the Vancouver City Police at the plaintiff's residence on the 15th of December 1998, but he was not home.

[4] On the 17th, the same community healthcare worker with two doctors and the police attended, and the plaintiff was at home.

[5] As described by counsel for the plaintiff in his brief, the plaintiff claims that the defendant police officers unlawfully entered his home on December 15, 1998, and unlawfully seized his property, and that on the 17th of December the defendants failed to appreciate that they were dealing with a person suffering from

a mental illness, but rather treated the plaintiff as if he was engaged in criminal activity.

[6] The plaintiff says that the defendants wilfully chose a reckless and grossly negligent course of action in which they ignored the medical professionals who were on the scene, called in the Emergency Response Team, unlawfully entered the plaintiff's home and wrongfully escalated a confrontation with the plaintiff by discharging Arwin rounds and O.C. pepper spray in his home.

[7] The course of action by the defendants eventually caused the plaintiff to exit his bathroom with an axe, and upon doing so, he was shot by one of the defendants.

[8] The defendants take the position that indeed the Emergency Response Team attended, and that negotiators attempted to convince the plaintiff to come out of his bedroom peacefully. Those negotiations failed, and then the ERT entered the bedroom and used teargas in an attempt to subdue the plaintiff. The plaintiff is then alleged to have attacked the ERT members with an axe, and after attempting to subdue him using the Arwin device, he was shot and wounded.

[9] Although the incident occurred in December 1998, apparently the writ and statement of claim have been issued in a timely fashion, but there has been a hiatus from approximately September of 2001 until September of 2003 as a result of an issue being raised as to whether counsel chosen by the plaintiff was appropriate to act on his behalf. That issue has been resolved, and since the fall of 2003, matters have been proceeding, including demands for discovery of documents, which give rise to this application. It should be noted that the trial is set for September of 2005, and that discoveries have not yet been undertaken, although I am given to understand that they have been scheduled.

[10] The notice of motion as it stands is some five paragraphs, each of which has several subcategories. After attempting to deal with the matter in a general way, I directed counsel for the plaintiff to advise which specific concerns he had so far as the production of documents was concerned. He informed me that he requires paragraphs 1(h), namely the complete employment records of the department police officers, paragraph 2 (c), (d), (h), (i), (j) and (k), namely:

> (c) complaints and/or reports relating to the use of force, particularly lethal force by the VPD in respect of dealing with mentally ill persons;
>
> (d) minutes, correspondence and other communications as between any of the above and the Provincial Mental Health Advocate and the Vancouver Richmond Health Board in respect of the VPD dealings with mentally ill persons;
>
> (h) minutes of meetings and communications relating to the disposition of all complaints relating to the use of force against mentally ill persons;
>
> (j) reports, recommendations and communications relating to the use of alternative or non-lethal resources as an application of force in emergency situations; and
>
> (k) all reports, correspondence and internal memorandum relating to the death or wounding of mentally ill persons by the VPD.

Paragraph 4(h):

> (h) the complete employment records...

which, of course, is a duplication of paragraph 1(h).

[11] The other primary focus is that there be an affidavit as to documents, the plaintiff taking the position that it is clear that there has not been appropriate disclosure of relevant documents.

[12] It should be pointed out that, as this matter has been ongoing, significant efforts have been made utilizing the provisions of the ***Freedom of Information Act*** to have information provided both from the City of Vancouver, the Vancouver Police Department, which, as I understand it includes, by the way it is structured, the individual defendants.

[13] It should also be noted that the plaintiff was charged as a result of the incident which took place, and that as a result of that a preliminary hearing took place, at which the usual full and complete disclosure through the Crown prosecutor was made.

[14] I am not satisfied that the fact of ***Freedom of Information Act*** disclosure and/or disclosure through the operations of a criminal proceeding constitute document disclosure by any of the defendants. However, it provides, I think, a clearer understanding of the fact that not only have there been three lists of documents, including some 170 documents, but there has also been extensive production of information pursuant to the provisions of the ***Freedom of Information Act*** and as a result of the criminal prosecution.

[15] Dealing specifically with the various items, the plaintiff requests all employment records of each of the individual defendants. There is no time limit set on this. There is no indication that anything other than the entire employment record of each of the individual defendants is sought.

[16] I am satisfied, and rely upon the decision ***L.D.F. v. a Psychiatrist*** (1984), 53 B.C.L.R. 216, that all that should be produced are results of disciplinary matters resulting from specific complaints which relate to a like incident as occurred relating to the plaintiff. I am not satisfied that the entire employment record of each of the individual defendants is in any way relevant to the matters before the court. Reliance is also placed on the decision of ***Harris v. Sweet*** (2001) B.C.S.C. 504.

[17] The contention here of the plaintiff is that there are similar facts which are relevant, and as the claim also includes exemplary damages and the like, it is contended that the pleadings are sufficiently broad that it brings perhaps more matters into question than had they only dealt with this specific incident.

[18] The position taken by counsel on behalf of the defendants is that the documentation relating to incidents which post-date the incident are not relevant, relies in part on the disclosure under the ***Freedom of Information Act***, and specifically relies on the affidavits of a paralegal Linda Martin, and police officer Randy Smith, which cover, in large part, two primary issues concerning the defendant. Namely, the production that has occurred and, at page 29 of Mr. Smith's affidavit, the "monumental undertaking" to search what could be as many as 1,000,000 police files in attempting to answer the request for production of documents of the plaintiff.

[19] It should be noted that paragraph 2(c) was agreed to be adjourned generally, and the position taken there, prior to that request, was that there is no designation in the Vancouver City Police records relating to the definition of mentally ill persons, and as pointed out in the letter dated February 11, 2002, the issue, as described by Dan Bezanson, who is a sergeant involved in the Internal Investigation Section:

> The issue of tracking complaints by the involvement of people suffering from mental illness would be extremely problematic. For example, who would define this and how would it be defined? Would a complainant who identifies him or herself as a mental patient be the only one we could track? What about people we merely believe based on our experience and training are suffering from mental illness, even though there is no formal diagnosis or confirmation from a medical practitioner? Clearly, there is no simple way to attempt to track such matters, although there are many internal files where mental health issues are identified as a concern or a significant issue in the investigation. The only way to

identify the files involved would be to conduct a manual search of all internal files, reading through all documentation to determine if any such issues surface. This would be a monumental undertaking.

[20] The plaintiff has sought documents going back to 1990, or to an unstipulated date. In response to requests from myself, so far as the request of paragraphs 2 (h), (j) and (k) are concerned, the plaintiff would be satisfied with documentation from 1995 to 2000. The difficulty is, of course, that there can be a significant number of documents which must be sought and then reviewed by the defendants to provide the information sought.

[21] I am satisfied, based upon the information contained in the affidavit of Randy Smith, that it would be unrealistic for the defendants to be required to go back, certainly beyond the year 1995. It is my understanding that so far as subparagraph (k) of paragraph 2 of the notice of motion is concerned, there are some files which have been located, being some nine files, a synopsis of which has been reviewed by counsel for the defendants, and some documentation have been provided, and there may be more which will be provided.

[22] The decision of ***Kiewit Sons v. B.C. Hydro*** (1982), 134 D.L.R. (3d) 154, B.C.S.C. was referred to, where reference is made to the enormous expense which may be required in attempting to determine whether or not documents exist. It has been determined that a *prima facie* case that there is something relevant that may be covered must be established. It is the contention of counsel for the defendant that that has not been shown, particularly in reference to (h), (j) and (k).

[23] I am satisfied at this time that it is not appropriate that an order be made for production of documents in para. 2 (h), (j) and (k), based upon the extensive production that has occurred, and given that there has not been anything other than a speculative basis provided by the plaintiff that indeed such records exist.

[24] I am satisfied that it is sufficiently early in the actual life, if you will, of the lawsuit, and given the time that is left before the trial commences, and the fact that there are discoveries to be conducted, that it is well open to the plaintiff to renew its claim for production of documents without any significant detriment occurring to the plaintiff.

[25] The balance is that the defendant would be placed in what I consider to be an economically untenable position, to conduct manual searches in the hope of uncovering documents which may have relevance in the matter.

[26] I also note that there have been no applications brought to in any way attempt to limit the claim of the plaintiff at this point, which may or may not occur in the future.

[27] So far as the motion is concerned, the employment records, as I have restricted them as requested in paragraph 1(h) and 4(h), will be dealt with under paragraph 1(h) and will be provided.

[28] So far as the issue of costs is concerned, I am satisfied that the application brought by the plaintiff has been significantly broader than on I hope appropriate reflection was necessary. Therefore, so far as the motion is concerned, although the plaintiff has been partially successful, each party should bear their own costs.

[29] I did not specifically deal with the need of an affidavit verifying the list of documents, but I think it can be concluded from my reasons that it is inappropriate at this time that such an order be made. So that application will be dismissed.

"Master A. Donaldson"