Citation: ☼ Park v. Solicitor General
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File No: 07-18599
Registry: North Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

Jeung Ki Park

CLAIMANT

AND:

The Ministry of Public Safety and Solicitor General of British Columbia

DEFENDANT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE CAROL BAIRD ELLAN

Counsel for the Claimant:	In person
Counsel for the Defendant:	P. Alma
Place of Hearing:	North Vancouver, B.C.
Date of Hearing:	May 10, 2012
Date of Judgment:	May 10, 2012

[1] These reasons relate to assessment of damages for wrongful arrest and false imprisonment of the claimant Jeung Ki Park by a member of the RCMP on June 5, 2006. The facts of the case are set out in separate reasons dated March 23, 2012.

[2] The findings that are relevant to the assessment of damages are the following. Mr. Park was arrested in the public atrium of Lions Gate Hospital without grounds by Cpl. Norman, an experienced member of the RCMP. Cpl. Norman took Mr. Park to the ground, with the assistance of another officer and two or three security guards, where he was restrained, held down, and handcuffed. I found that the officers and guards did not use excessive force.

[3] The arrest took place in the presence of and over the objections of Mr. Park's elderly mother, who was suffering from terminal cancer, to which she unfortunately later succumbed. She had been escorted to the hospital by Mr. Park for the purpose of consulting with her oncologist. The evidence discloses that she was distraught when her son was taken into custody. There were other bystanders observing the altercation. Mr. Park was known at the hospital by some of the staff at the chemotherapy ward, as well as some of the security guards.

[4] Mr. Park was taken to the RCMP detachment. His mother was apparently left behind at the hospital. Mr. Park's eyeglasses were taken from him; he was photographed, and lodged in a jail cell. He was released without charge over four hours, perhaps five, after the initial arrest. While at the detachment, Mr. Park was served with a letter from the hospital outlining their expectations regarding appropriate behaviour.

[5] I found that Cpl. Norman was negligent, but that she did not abuse her authority, she was not grossly negligent, and she did not act maliciously or for any improper motive. I characterized her actions as inattentiveness to rights, lack of care about her grounds for arrest, about the authority under which she attended the hospital, and about the manner in which she treated Mr. Park after his arrest, including keeping him for more than four hours completely unnecessarily.

[6] Mr. Park was required to abandon his claim for personal injury by a pre-trial ruling, due to his failure to file a Certificate of Readiness. The assessment of damages therefore relates solely to wrongful arrest and false imprisonment.

[7] Mr. Alma, counsel for the defendant, who was not counsel at the trial, concedes that this is not a fleeting detention or notional arrest, where nominal damages may suffice. He has cited cases in the range of $3000 to $5000 and submits that damages in the amount of approximately $3500 are appropriate.

[8] Mr. Park submits that the combination of general, special and punitive damages should be $20,000 to $25,000.

Case Law

[9] The cases cited and discussed by both parties were as follows: *Diallo v. Benson*, 2006 O.J. No. 91 (S.C.); *Collins v. Brantford Police Services Board*, [2001] O.J. No. 3778 (C.A.); *Kucher v. Guasparini*, [1988] BCJ No. 582 (S.C.); *Magiskan v. Thunder Bay (City) Police Services Board*, 2011 ONSC 7334; *Green v. Ottawa Police Services Board*, 2007 OJ No. 3589; *Thornton v. Hamilton-Wentworth (Regional Municipality) Police Force*, [1999] O.J. No 1250 (S.C.J.); *Walkey v. Canada*, [1997] B.C.J. No. 599

(S.C.); *Dix v. Canada (Attorney General)*, 2002 ABQB 580; *Phillips v. Nagy*, 2006 ABCA 227; *Trudgian v. Bosche*, 2003 SKQB 168; varied, *Trudgian v. Wood*, 2005 SKCA 13; *Parsons v. Woodfine*, 2009 CanLII 33053 (ONSC); *Hanisch v. Canada*, 2003 BCSC 1000; varied, 2004 BCCA 539; *Al-Harazi v. Regional Municipality Niagara Police Services Board*, 2005 CanLII 15473 (ONSC); *Berketa v. Niagara Police Services Board*, 2008 CanLII 2147 (ONSC).

[10] Some of the cases cited by the defendant, notably *Diallo v. Benson*, and *Collins v. Brantford*, were older and involved either a lesser period of detention, in the case of *Diallo*; or contained an *obiter* assessment of damages after a finding of non-liability, as in the case of *Collins*. Those cases set the very bottom of the range at $3000 but in my view are distinguishable, as is *Kucher v. Guasparini*, which is even more dated, involved only a failure to assess whether an arrest was necessary under section 495, and a limited interference with liberty. The award in *Kucher* was also $3000.

[11] More recent is the case of *Magiskan*, a police officer, who received $5000 for an arrest in which she was said to suffer no injury, was detained for 3 to 4 hours, and suffered embarrassment among her fellow police officers. She had originally been charged and was acquitted of assault and obstruction, and her claim was brought 7 years after the incident. *Green*, a 2007 case, also involved a finding of non-liability, so the award is *obiter*, or provisional I suppose, and I find those kinds of assessments to be less helpful because the findings of fact on which they are based are not established. Nonetheless Rutherford J. would have awarded $7500 for an 11 hour detention of a woman who should have been taken to hospital.

[12] A similar amount $7500 was awarded in *Thornton*, a 1999 case, for an arrest of a father in the presence of his child, without proper investigation of a domestic dispute, and a detention for 6 and a half hours. The final case cited by the defence, *Walkey*, the notorious teddy bear caper, was an aggravated situation of what really amounts to child abuse, resulting in an award of $10,000 in 1997.

[13] Turning to the cases relied upon by Mr. Park, the first of them, *Dix v. Canada*, is of course a more egregious set of circumstances involving not only 23 hours in custody but an interrogation, deprivation of food, forcing the claimant on a midnight run against his wishes to the scene of the crime, and so on. The court found that many torts were committed and awarded $200,000. It is clearly outside the range.

[14] *Phillips v. Nagy* is a case about bodily searches, much more intrusive than simple detention, where a young girl was detained without grounds for a drug search first at the airport and later at the hospital. There was evidence of persistent psychological trauma. The judge awarded $30,000 for the unlawful search and false imprisonment.

[15] *Trudgian v. Bosche* resulted in an award of $31,500 after being reduced by $20,000 on appeal. This was a case of inadequate investigation, similar to that which occurred here, and humiliation in front of the claimant's peers at the RCMP training academy. The judge found that the investigation was not reasonably done, the defendant's liberties were infringed, and the arresting officers were inattentive to his rights.

[16] At paragraph 18 of the Court of Appeal decision, Gerwing J.A. stated:

> 18 On the other hand, we are of the view that damages must be more than nominal as argued by the appellant. In this case, despite requests to the contrary and what the trial judge found to be a lack of necessity, the appellant arrested the respondent immediately, refusing to let him put on civilian clothes and removed him, in the view of his troop, in handcuffs. The respondent, a former and present correctional officer, had never been incarcerated and said he was, and the trial judge accepted this, traumatized. Further, he experienced difficulties with respect to regaining and being promoted within his current employment. This merits an award of substantial damages, albeit not to the extent the trial judge gave. Based on the jurisprudence and our view that the trial judge considered erroneous factors in exceeding the normal range, we reduce the general damages from $50,000 to $30,000. The appeal is allowed to this extent only.

[17] *Parsons v. Woodfine* dealt with an arbitrary detention in response to the claimant, who was known to the officers, having yelled at an officer. In retaliation, it seems, he was assaulted by the officer who arrested him. The officers were found to have infringed his rights and also falsely arrested and imprisoned him. He was awarded the court's monetary limit of $50,000, and most of the officers were held personally liable. It was a serious set of circumstances involving overt torts, where Parsons was handcuffed and tasered in the genitals. As pointed out by Mr. Alma, the portion of the award attributable to the wrongful arrest and imprisonment was $7000.

[18] *Hanisch v. Canada* is an interesting case involving the wrongful arrest of a fellow who lived in a remote community, who was transported miles away from his home to face charges that were unfounded. On appeal, punitive damages were disallowed; while $25,000 was upheld for the aspect of general damages.

[19] Saunders J.A. stated:

> 60 Non-pecuniary damages are intended to compensate for the deprivation of liberty, public humiliation and loss of reputation and mental

> anguish. As such they reflect the nature of the events, the character of the person wronged and the community where the events occurred.
>
> 61 Here the torts were committed against a well-known person in front of his only neighbours and his guests. The result was removal from his home community initially for three days and then after as he attended to the court process. There were allegations of criminal conduct and the suggestion put about that he was capable of violence. I have no doubt these circumstances merited an award of damages in the upper end.
>
> 62 Considering that $3,500 was considered a fit award in the late 1960s by Chief Justice Wilson and in 1970 by this Court, and considering the change in the value of money in the thirty plus years since that case, I cannot say the order of $25,000 in non-pecuniary damages is other than fit.

[20] In relation to the aspect of punitive damages, she said:

> 57 In my view, the conclusions of the trial judge that Cst. Ward failed to investigate, was unable to appreciate what he had done, and likely became rattled and apprehensive, do not fit within the notions of malice, oppression or high-handedness referred to in Hill. At worst Cst. Ward's actions reflect immature judgment, inadequate training, inexperience, or all three states which may lead to poor work performance.

[21] Mr. Alma points out that there was a much longer detention in the *Hanisch* case than here.

[22] *Al-Harazi v. Regional Niagara* is another case involving a failure to adequately investigate the circumstances before choosing to arrest. Mr. Al-Harazi was booked into a jail in crowded conditions, unnecessarily, it was found.

[23] Walters J. stated:

> …As stated earlier, the time frame the court must consider is from the time of arrest until the first intervention of a judicial act - in this case some 14

> hours. Both counsel have given me various authorities for the range of damages in similar situations.
>
> [23] In determining the quantum of damages, the court must insure that the plaintiff is only awarded damages that flow from the wrongful acts. (see ***Carpenter***, p.741)
>
> > "…They must be reasonable in amount and are related to the loss of time and interruption of the routine of his life. They are influenced by the bodily and mental suffering he has endured, by the indignity he has suffered, by the humiliation he has experienced..."
>
> [24] In the case at bar, although the plaintiff was detained for 14 hours overnight, his suffering was mainly composed of mental anguish and humiliation, which occurred while he was incarcerated. I have heard no evidence of any ongoing mental or physical suffering as a result. Taking into account all the circumstances, I assess the plaintiff Hashim's damages for false arrest, unlawful imprisonment and negligence at $20,000.

[24] Finally, *Berketa v. Niagara* is not particularly relevant given the emphasis on the injuries suffered by the claimant and the dismissal of her claim for false arrest.

Analysis

[25] In relating the facts here to the cases cited I place emphasis on the following. Mr. Park was arrested in the presence of his ailing mother, who was dying of cancer. As Mr. Alma points out, the matter could have been dealt with in a less heated manner on both sides, but I noted in my reasons that if Cpl. Norman had just asked Mr. Park to go outside with her and discuss the problem, it likely would have been diffused. She acted insensitively not only to Mr. Park but to his mother, whom she knew was both present and a patient at the hospital. I can conclude that it would have been

traumatizing to the mother, like the daughter in the *Thornton* case, to see her son taken down and carted away.

[26] It is clear from the vigour with which Mr. Park has pursued his action that the effects on him are persistent, and that is a natural inference for the Court to draw. No doubt the incident has forever tainted for him the final portion of his mother's life. Certainly he would suffer embarrassment at future attendances in the hospital. Again, these are reasonable inferences from the facts. As well it is reasonable to infer that he would have some lingering mistrust of the police.

[27] I will say firstly that the facts as I have found them do not justify an award for punitive damages in light of the law, as I have related already. There is also no basis for an award of special damages of any kind.

[28] Considering the range of general damages set by the cases cited, in my view this is higher than the range set out by Mr. Alma in his able submissions. I find that the circumstances warrant an award of general damages in the amount of $15,000.

[29] Mr. Park is entitled to his costs of filing the action, service fees, and any other incidental costs related to the conduct of the proceedings other than the personal injury aspect. There will be Court Order Interest from June 5, 2006. The full amount is payable within 45 days of receipt by the defendant of a payment order.

Judge C. Baird Ellan
Provincial Court Judge