

Citation: Park v. A.G., Minister & Paladin Security  
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Registry: North Vancouver

## IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

**JEUNG KI PARK**

CLAIMANT

AND:

**HER MAJESTY THE QUEEN  
IN RIGHT OF BRITISH COLUMBIA,  
THE MINISTER OF PUBLIC SAFETY AND  
SOLICITOR GENERAL OF BRITISH COLUMBIA,  
and PALADIN SECURITY GROUP LTD.**

DEFENDANTS

### REASONS FOR JUDGMENT OF THE HONOURABLE JUDGE C.BAIRD ELLAN

Appearing in person:

J. K. Park

Counsel for Paladin Security  
Group Ltd:

R. L. Pearce

Counsel for RCMP and Minister:

F. Paradis

Place of Hearing:

North Vancouver, B.C.

Dates of Hearing:

March 23, November 3 and 25, 2011; January  
13, 2012

Date of Judgment:

March 23, 2012

[1] The claimant Jeung Ki Park seeks damages for wrongful arrest and false imprisonment against the RCMP, and for assault and battery against Paladin Security, based on an incident at Lions Gate Hospital in 2006.

[2] The substantive issues are whether the police and security guards who participated in arresting Mr. Park were acting within their authority, or used excessive force in taking him into custody.

[3] Before turning to the facts, I will deal with a few preliminary procedural issues.

## Parties & Preliminary Issues

[4] Mr. Paradis on behalf of the Provincial Crown submits that it is unnecessary for the Queen to be named as a party, and the appropriate representative of the RCMP for these purposes is the named Minister. Accordingly, the Queen will be removed as a defendant and the Notice of Claim amended accordingly.

[5] Mr. Park named several “John Doe’s” in the absence of information regarding the identity of the security guards. Both corporate defendants accept the proposition that they are vicariously liable for torts committed by their employees. The guards have now been identified; however the basis advanced for their liability relates to conduct in the course of and within the scope of their employment. There is accordingly no basis for a finding of personal liability against them. The case against the individual defendants named as “Doe” is dismissed.

[6] Mr. Park advanced a claim for “abuse of authority”. It was neither pled as a separate cause of action nor properly articulated in submissions. The claim may amount to an allegation of the kinds of conduct enumerated in section 21(3) of the *Police Act*: “dishonesty, gross negligence or malicious or wilful misconduct.” Those kinds of conduct may form a basis for personal liability of police officers; however, Mr. Park has withdrawn his claim against the individual officers. In this case, there is in my view no basis for a separate claim under the heading abuse of authority. Some of the allegations he relied upon may have relevance to the scope of the arrest and imprisonment, and they will be considered in that context.

[7] In his submissions, Mr. Park relied on sections of the *Canadian Charter of Rights and Freedoms*. Counsel for the defendants took the position that *Charter* breaches were not alleged in the Notice of Claim, and as well, that this Court does not have jurisdiction to award damages for breach of the *Charter*. I advised Mr. Park that I agreed with the position taken by counsel and he would not be permitted to rely on breaches of the *Charter* as a basis for liability.

[8] In an earlier ruling, the Honourable Judge Rodgers dismissed Mr. Park’s claim for damages for personal injury because he failed to file a Certificate of Readiness. Mr. Park made submissions before me regarding the physical effects of the incident; however, it is not open to him to pursue a personal injury claim. His claim will be limited to general damages and out of pocket expenses, if he is successful on the issue of liability.

[9] The issue of damages was reserved for further submissions in the event that Mr. Park was successful in establishing liability.

## Facts

### 1. Background

[10] The incident about which Mr. Park complains occurred on June 5, 2006 when he attended with his elderly mother to the chemotherapy department at the Lions Gate Hospital. His mother was battling cancer, to which she later unfortunately succumbed. Although they did not have an appointment for chemotherapy that day, Mrs. Park had attended the hospital for some blood work, and they were in the habit of dropping into the chemotherapy department to meet with or talk to the oncologist. That day, they wanted to talk to the doctor about

## Mrs. Park's treatment schedule.

[11] The doctor was usually quite busy and Mr. Park and his mother would wait in the chemotherapy section to talk to him, sometimes for a long time. The evidence supports a conclusion that they had become something of a nuisance to the oncologist. Whenever they did manage to talk with him, Mr. Park was in the habit of taping the conversation so that he could translate it into Korean later for his mother. He taped a large part of the incident on June 5, 2006.

[12] That day, when Mr. Park approached the doctor, the doctor refused to speak with him. On the recording, Mr. Park can be heard saying the doctor's name in an apparent effort to gain his attention. The doctor tells Mr. Park that he has no appointment and that if Mr. Park will not listen to him, he will have security come and get him. Mr. Park then starts to say something, and the doctor interrupts him to ask the staff to call security. Mr. Park's mother says something to the doctor, and he tells them to leave him alone. Mr. Park says that the doctor physically pushed him away at that point. The doctor did not testify.

[13] Mr. Park and his mother remained in the chemotherapy area for a time, discussing what had occurred. They decided to go to the administration office and complain. Mr. Park had in the past made complaints to the president about other hospital personnel.

[14] Before they went to the office, Mr. Park's mother had to rest for a time, so they sat in the chemotherapy waiting area. This portion of the recording, which lasts several minutes, consists of Mr. Park and his mother conversing in Korean, and some conversation between Mr. Park and another person about the doctor's behaviour. There is no mention of Mr. Park and his mother being asked to leave the hospital, and there is no audible evidence of a disturbance.

[15] It was Mr. Park's evidence that as he and his mother then walked out of the chemotherapy department and toward the hospital lobby, they were confronted by a group of Paladin guards. He says that one of the guards told them they "had to leave" or they would be arrested. This is not audible on the recording, but Mr. Park can be heard telling a guard it is none of his business; to "forget about it".

[16] The guard responds that it is their business because staff complained. Mr. Park tells the guards to "stop following us" or he will call the police. The guard

responds that the police are on their way and says, “We are not doing anything”.

[17] Mr. Park says that when the guard told him and his mother to leave he believed that they merely wanted them to leave the chemotherapy area. He says he and his mother were already on their way out when the guards arrived. He takes the position that he was not directed to leave the hospital nor did he refuse to do so. He says he and his mother were going to leave after going to the president’s office to complain, but his mother had to sit down, and no one asked them to leave after that. He acknowledges that the guards were directing or guiding them down the hallway, but he did not take from that any requirement that they leave the hospital.

[18] One of the Paladin guards, Bevan Dich, testified that he was called to the chemotherapy clinic to assist in removing an individual. He was under the impression that Mr. Park had been asked to leave and had refused. Mr. Dich says that he or another security officer told Mr. Park he had to leave the hospital or they would call the police. Mr. Dich says that Mr. Park refused. He says the guards tried to talk him into leaving, but he continued to refuse. Mr. Dich went back to the security office to call the police. He called the non-emergency line and told the dispatcher that an individual was refusing to leave and they needed assistance to remove him.

[19] Mr. Dich says Mr. Park told the guards he was going to file a complaint and then leave the hospital and he was told he could not do that and they had to leave. While they waited for the police, Mr. Dich says, the guards stood by but did not physically contact Mr. Park. When Mr. Park and his mother started walking down the hall, the guards followed them.

[20] Mr. Chow of Paladin Security testified that he was aware that Mr. Park had caused disturbances in the chemotherapy area in the past. He believed that the charge nurse wanted security present when he was there. On the date in question he was in the security office, which is off the hallway leading from chemotherapy, when he heard about an incident at the chemotherapy section. He heard an escalating verbal discussion outside the security office. He did not see this part of the interaction between Mr. Park and the other guards.

[21] Pamela Anne Sharif was the senior security officer at the hospital at the time of the incident. She was present for the interaction with Mr. Park before the

police arrived. She says Mr. Park said he wanted to talk to the hospital administration and the guards told him to stay where he was.

## **2. Police Arrival and Grounds for Arrest**

[22] When Cst. Norman and Cpl. Stewart of the North Vancouver RCMP arrived in response to the call, they encountered Mr. Park, his mother and the security guards in the lobby or what is referred to as the atrium, a central and public part of the hospital. Within a few minutes of their approaching Mr. Park, he was on the ground and handcuffed.

[23] Mr. Park says when the police arrived, the guards were behind him. He says he tried to explain the situation to the police officers but they became aggressive and told him he must provide identification or he would be arrested. While he and the officers were engaged in this discussion, Mr. Park says, several guards jumped him from behind, placed him in a choke hold, and pushed him toward the officers. The officers joined in the struggle.

[24] Mr. Chow says that by the time he came out of the security office, the police had arrived. He says the guards stayed back five or 10 feet from the interaction between Mr. Park and the police, and he recalled the guards being behind the police officers, not behind Mr. Park.

[25] Mr. Dich was with Mr. Park when the police arrived. He thought it took them about an hour to arrive. Mr. Park and his mother were still in the chemotherapy section but the guards were walking them out. He says the guards were instructed by their supervisor not to physically engage with Mr. Park and his mother to get them to leave the hospital. Their policy is to call police for assistance when someone is trespassing, and to assist the police when a person becomes physically resistant.

[26] Mr. Dich heard one of the officers asked Mr. Park for identification. He says that Mr. Park was not listening to the police and was refusing to leave until he spoke with a doctor. The officer told him they were investigating a complaint and if he did not provide identification, he would be arrested for preventing the investigation.

[27] Ms. Sharif was in the hallway area near the chemotherapy area when the

police arrived. She heard one of the police officers ask Mr. Park for identification. Ms. Sharif says they interacted for about 15 minutes, before the arrest. She was dealing with Mr. Park's mother, who was very upset and wanted to go and help him. She says Mr. Park was being very loud, and she heard the police tell him he had to leave, and that he would be arrested if he did not provide identification.

[28] Cpl. Norman in her testimony recalled that she and Cst. Stewart had been called about a disturbance in the chemotherapy area. They received limited details from the dispatcher.

[29] When they arrived, she saw the security officers with Mr. Park and his mother in the lobby. She says she tried to get information from one of the guards, but she encountered Mr. Park and that interrupted her. She said she would have gone to the chemotherapy area if she had not seen Mr. Park first. He and his mother they were moving away from the chemotherapy area. She said she did not have time to talk to security before she encountered Mr. Park and his mother. She did not perceive that they were posing any danger.

[30] Cpl. Norman told Mr. Park they were there about a disturbance. Mr. Park said there was no disturbance, and appeared quite agitated. Cpl. Norman repeated to Mr. Park that she was there to investigate a disturbance and told him that she needed to find out who he was and gather his personal details. Mr. Park said he would not provide identification and he wanted to go and speak to the hospital president.

[31] Cpl. Norman says that she told Mr. Park that she could not let him leave to go and see the president and if he refused her request for identification he would be obstructing her, but Mr. Park continued to insist that he was not causing a disturbance. His voice was louder than a speaking tone, she says, and he was getting louder as they spoke.

[32] Cpl Norman asked Mr. Park's mother if she could persuade him to give her his identification. That was not successful, and she told Mr. Park he would be arrested if he did not provide identification. He refused, and she told him he was under arrest.

[33] Cpl. Norman says Mr. Park was louder than the others around him, insistent that he was going to see the president, and he talked over her when she

tried to use simple language and clear instruction. Mr. Park kept repeating that his mother was a patient. Cpl. Norman thought she told Mr. Park about five times that he needed to provide identification or he would be arrested. She did not recall him saying that he would leave after seeing the president.

[34] It was Cpl. Norman's practice to obtain identification from people she was investigating and she considered it an offence for such a person to fail to provide identification. She believed it was reasonable for her to require identification and to detain an individual for that purpose, in the process of a criminal investigation. If such a person refused to provide identification she would arrest them. Generally she would ensure that she had explained and reiterated the requirement that they do so, and assure herself of the fact that they were not complying and they were not likely to become compliant.

[35] Cpl. Norman says she told Mr. Park he was being arrested for causing a disturbance and obstructing a police officer. The disturbance she referred to was Mr. Park's disruption of the chemotherapy area and as well, she says, he was drawing attention during her interaction with him, which she referred to as "possibly" causing a disturbance. The obstruction was his failure to provide his name, address and date of birth while she was investigating the disturbance.

[36] Cpl. Norman acknowledges that Mr. Park did not display any aggression or have a weapon. She says his stance changed when she told him he was going to be arrested. She also perceived his attempt to leave and go see the president as somewhat aggressive. She had Mr. Park's first name and had been told his mother was a patient before the arrest. She was aware that he was known to hospital staff.

[37] Cpl. Norman acknowledges that Mr. Park's mother said she was tired and just wanted to leave, and that Mr. Park also expressed a desire to leave, after he saw the president. She agreed with Mr. Park's suggestion that he might not have been causing a disturbance continuously throughout their dealings and may at one point have appeared to be willing to leave. She did not perceive that he was cooperating, although she agreed that the disturbance might be said to have ceased. However, she still did not have his identification or a full name for him.

[38] Cpl. Norman denied that she always arrests people who do not produce their identification but said she felt it was necessary in this case. She agreed that



she could have asked Mr. Park to go outside with her, to avoid a disturbance in the lobby, but she did not believe he was listening to her. She did not recall Cst. Stewart participating in the conversation with Mr. Park or the arrest.

[39] Cst. Cameron Stewart attended with Cpl. Norman to the hospital. He testified that when they arrived one of the guards pointed out Mr. Park. A guard told him that they wished to have Mr. Park leave the hospital and that he had refused their request to do so. Cst. Stewart stood by as Cpl. Norman dealt with Mr. Park. He did not engage verbally, initially, though he can be heard on the recording later, telling Mr. Park he was causing a disturbance.

[40] Cst. Stewart describes Mr. Park as quite confrontative and argumentative, with his arms folded and an angry look on his face. He saw Mr. Park try to leave, to go and speak to the hospital president, but Cpl. Norman told him he was being investigated and he could not just walk away at that point. Cpl. Norman explained to Mr. Park that they were there to investigate a disturbance and that she needed to see his identification.

[41] Mr. Park was argumentative and Cpl. Norman explained over and over to him why they were there. Cst. Stewart estimated that this conversation lasted about 10 minutes, until Cpl. Norman told Mr. Park he was under arrest for causing a disturbance and obstructing a police officer.

[42] Cst. Stewart considered that Mr. Park was uncooperative because he was being confrontative, rather than calmly explaining his side. If Mr. Park had produced his identification and calmed down, Cst. Stewart may not have considered an arrest necessary. He believed the arrest was necessary because Mr. Park was not “de-escalating” his behaviour or the disturbance.

[43] On the recording, Mr. Park may be heard attempting to explain to the police officers his frustration at the oncologist’s behaviour. He complains that the doctor called security for no reason, and that he just wanted to talk about a change in his mother’s schedule. There is some discussion about the reasons for the police attendance and whether Mr. Park was causing a disturbance. As the discussion continues, Mr. Park’s voice escalates somewhat.

[44] A fair amount of the discussion consists of Cpl. Norman telling Mr. Park that she is there to investigate a disturbance and Mr. Park repeatedly denying that

there was any disturbance. They go back and forth on this point for some time. Mr. Park says at one point that he and his mother are going to go and see the hospital president. Cpl. Norman says no, and tells him he is “not going anywhere” while she is speaking to him. She asks him to show his identification. Mr. Parks asks why, and Cpl. Norman says she is investigating the disturbance. Mr. Park again denies there is a disturbance, and says they are “done”.

[45] Cpl. Norman tells Mr. Park she can arrest and handcuff him if he does not comply. Mr. Park continues to deny he has caused any disturbance, and threatens to go to her supervisor and make a complaint. Cpl. Norman reiterates that she just wants to see his identification. Mr. Park refuses, and again denies there is any disturbance. They appear to reach something of an impasse. There is no further discussion of an arrest.

[46] The tape ends with what sounds like the onset of a physical altercation. Immediately preceding that, Cpl. Norman tells Mr. Park that she is speaking to him as part of the investigation of causing a disturbance, and Mr. Park says she should speak to the doctor and he doesn't need to provide identification because there was no disturbance.

[47] There is no discussion on the recording of any requests that Mr. Park leave the hospital. In fact, Cpl. Norman tells him he cannot leave the lobby until she has completed her investigation. It is clear that from that point, he was detained.

[48] Mr. Park in his own evidence denies that he was ever told he was under arrest or given any verbal indication of what the officers and guards were doing. He says he was told only that he was causing a disturbance, which he denied, as he had already left the chemotherapy section. He told the officers there was no reason to arrest him. He says he did not see the arrest coming and was unprepared.

### **3. Degree of Force**

[49] Mr. Park says that after he was taken to the ground the guards were hitting him; Cpl. Norman tried to grab his wrists and twist his hands, and knelt on his back. He says Cst. Stewart grabbed him by the head and neck. Mr. Park had a previous injury to his back that caused him increased pain during the altercation. He cried out in pain, and his mother pleaded with the officers to stop.

[50] Mr. Chow says that when the officers tried to arrest Mr. Park he saw that he was resisting. He says he assisted “for a second”, so the officers could get a “clear grasp” of Mr. Park, then “disengaged”. Mr. Chow described Mr. Park’s resistance as “lashing out”. One of the officers was having difficulty controlling him. He says that it was not until after the police had gotten Mr. Park to the ground that the guards went to assist.

[51] Mr. Chow says he did not see any guard hit or strike Mr. Park, grab him by the throat, or shove him from behind. He did not remember how Mr. Park got onto the ground. He did not see any of the police officers use weapons, or strike Mr. Park. He says they used what looked to him like standard force to overcome his resistance and put his hands behind his back. He says Mr. Park continued to resist when he was on the ground, striking out with his arms and kicking his feet, trying to get the officers off him. The male officer was holding his legs. The female officer had her knee on Mr. Park’s back. He did not recall Mr. Park screaming out in pain but agreed there was a lot of yelling.

[52] Mr. Dich says that as the officer tried to handcuff Mr. Park, Mr. Park pulled away and lifted his arms up. Mr. Park went into what he described as an “aggressive stance”, as if he was about to punch the officer, with his arm pulled back and cocked.

[53] Mr. Dich said that when Mr. Park cocked his arm, he (Mr. Dich) moved in to grab Mr. Park’s arm. He and Mr. Park ended up on the ground. He could not say what caused them to go to the ground. Mr. Park was fighting and struggling to try to get up. The police officer got both Mr. Park’s hands behind his back and put the cuffs on him. Once the cuffs were on, Mr. Dich disengaged. He says he only engaged when he perceived Mr. Park was resisting being handcuffed. He did not recall whether any other guard became involved physically at that point.

[54] Ms. Sharif was not observing directly what transpired between Mr. Park and the officer, but concluded that the guards had not gone “hands on” until after the police interacted physically with Mr. Park.

[55] Cpl. Norman says that after she told Mr. Park he was under arrest, she got her handcuffs out of their pouch, held them in one hand and reached out with the other. She told Mr. Park to turn around and put his hands behind his back. Instead he backed away and pulled his arms up and away, brought his clenched

fists to his waist, then put his arms back.

[56] Cpl. Norman says she told Mr. Park again that he was under arrest. He continued to move away and move his arms so she could not reach them. He was moving them from side to side, making it difficult to cuff him. She put away her cuffs, and went in closer with both hands open; reached with one hand to Mr. Park's upper arm, toward his shoulder, and reached with the other to the back of his neck. She explained that she did this because he was continuing to resist, to move his arms and to thrash with his legs. Her intention was to get him to the ground where he could be controlled. She put his head down and pushed him to the ground. Throughout, she was telling him to stop resisting, that he was under arrest.

[57] Cpl. Norman says she put her knee on Mr. Park's back when he was on the ground. She has no recollection of anyone else assisting with the arrest until after Mr. Park was on the ground. She says that once he was down she told him he was now under arrest, gave him his **Charter** recitals, and called for another officer to come to the hospital to escort him to the police station.

[58] Cpl. Norman says she used only open hand force techniques, placing one hand on Mr. Park's arm and one on his upper neck, to push him to the ground. The struggle lasted perhaps a minute. She agrees that Mr. Park may have been yelling in pain while he was on the ground.

[59] Cpl. Norman says there is no standard procedure for non-compliant individuals. Her response would be based on her perceptions, the environment, who was with the person, whether there were other officers around, relative physical sizes, what she knew about the individual, all factored in quickly, in the moment, based on training and experience.

[60] She described the different techniques available, verbal commands, open hand controls, pain compliance, force with open or closed hands, use of feet, impact tools, baton, sprays, etc. Her training was to use force on an escalating scale, as required, and she said one can always go back on the scale. Her practice is to use verbal commands and directions to comply in a clear, concise and continuous fashion. She would normally take a suspect to the ground as a way of getting them under control, if they posed a risk of striking out or escape. She considers this low on the scale in terms of physical force.

[61] Cpl. Norman believes she could have arrested Mr. Park without the help of the security guards or her partner and did not remember any of them assisting. However, in her notes of the incident she wrote, “Security and cst grabbed arms and legs and took male to the floor.”

[62] Cst. Stewart says that after Cpl. Norman went to effect the arrest, he asked Mr. Park to put his hands behind his back, but Mr. Park pulled his hands away and backed off, then brought his hands up in fists to his chest. Cst. Stewart perceived this as resistant, combative behaviour. He says he tried to grab one of Mr. Park’s arms and Cpl. Norman tried to grab the other. Cst. Stewart recalls a few guards coming to assist as well. He says they all fell to the ground from the momentum.

[63] Mr. Park landed on his back, and they needed to turn him onto his stomach, but he was kicking and combative. Cst. Stewart used soft hand controls, grabbing Mr. Park’s legs to stop him from kicking. Within about 10 seconds they had Mr. Park handcuffed and had called for a third officer to come and escort him across the street to the detachment.

[64] Cst. Stewart believed that the intervention of the security guards in the arrest had been helpful, though he was not certain it would have been required. Generally as a police officer he would not ask for assistance from security guards as they are not peace officers. Usually he would ask them to step back.

[65] Cst. Stewart’s observations in relation to the use of force in effecting Mr. Park’s arrest were essentially the same as Cpl. Norman’s, with the exception of the point at which he first became physically involved. He believed it was momentum that took Mr. Park to the ground. He agreed that Cpl. Norman may have knelt on his back, that his feet were held, and that he remained on the ground for up to 15 minutes. He denied there were any strikes or blows. He did not recall whether Mr. Park was carrying a water bottle or backpack or had lost his glasses in the scuffle.

[66] Mr. Park denies drawing his hand back to resist being handcuffed. He denies having resisted arrest at all until after he was taken to the ground. As indicated, he takes the position that he was not told he was under arrest, and the arrest was unanticipated until he was taken down. He says that he could not have raised his hands as suggested because he was carrying a water bottle in one hand, and holding a backpack.

#### **4. Evidence of Disturbance**

[67] As to whether the discussion with police itself was a disturbance, Mr. Park agrees that there was a crowd or a number of onlookers when he was dealing with the police. There is no evidence that there was a disturbance of any kind before that.

[68] Mr. Dich says that the Paladin guards engaged in crowd control while the police were dealing with Mr. Park. He recalled that there were staff members at the admission counter. Ms. Sharif observed that people were gathering and had to be directed away from the location where Mr. Park and the officer were interacting. She described the scene as very disruptive.

[69] Cst. Stewart observed that there was a fair amount of foot traffic. People would stop and look and then move on. He did not see that anyone watched the whole incident.

#### **5. Detention at Police Station**

[70] After Mr. Park was handcuffed and the arrest was effected, a third officer arrived and took him in handcuffs across the street to the police station. He was kept there for several hours. While there he was photographed and a hospital representative served him with a letter outlining the behaviour that was expected of him if he attended again at the hospital. He was not charged criminally.

[71] Cpl. Norman says she had Mr. Park taken to the detachment because he had not been identified and he was under arrest for two criminal offences, causing a disturbance and obstructing a police officer. He was taken into the cell block, identified, given access to counsel, and processed for booking. Mr. Park insisted on speaking to a supervisor, and one attended to speak with him. Arrangements were made to have someone contact the hospital and determine their wishes.

[72] Cpl. Norman went back to the hospital to see if Mr. Park had left any items behind and when she returned Mr. Park was still trying to determine which lawyer to contact. She noted that he was not satisfied with first one, a legal aid lawyer, and made more attempts to contact lawyers. This went on quite a while, and then he was lodged into a cell.

[73] Cpl. Norman says Mr. Park was put in a cell because there was still some information to sort through. She was still determining what charges, if any, were going to go forward, and she had an appearance in court that afternoon. When she left him, Mr. Park was still argumentative, insisting he had not caused a disturbance, refusing to understand why he had been arrested, and wanting to speak to a supervisor.

[74] A few hours later, a member of the hospital staff provided a letter of expectations for Mr. Park outlining the conditions on which he may continue to attend at the hospital with his mother.

[75] When Cpl. Norman returned from court she learned that the hospital did not want to proceed with charges, and decided she would not go ahead with the obstruction charge. Mr. Park was released at 4:20 p.m. without charge, having been in cells for about four hours.

[76] Cst. Stewart's practice in relation to releasing suspects was that if the person was sober, once he got them to the cell block, had them speak to a lawyer, and let them calm down he would be of the view that they could be released. He confirmed that Mr. Park's glasses were taken from him at the station, and he was photographed.

## Submissions

### 1. Grounds for Arrest

[77] On behalf of the Crown, Mr. Paradis relies on section 25 of the **Criminal Code**. He does not submit that Cpl. Norman had grounds to arrest Mr. Park for obstruction of a police officer. He relies on the offence of causing a disturbance. He says Cpl. Norman was entitled to arrest Mr. Park for the disturbance in the hospital lobby caused by his resistance to Cpl. Norman's efforts to conduct an investigation. *Irving et al. v. Clemens et al.*, 2000 BCSC 291

[78] Mr. Paradis relies upon the following case law in advancing that there had been a disturbance, caused by Mr. Park, in this case: *R. v. Lohnes*, [1992] 1 S.C.R. 167; *R. v. Loughman*, 1998 ABPC 92; *R. v. Moore*, 1997 CanLII 458 (BCSC); *Davis v. Abbott*, 2000 BCSC 1210; *R. v. Jir*, 2010 BCCA 497.

[79] Mr. Paradis points to the evidence of various witnesses that Mr. Park was escalating in volume and aggression, speaking loudly as Cpl. Norman dealt with him. He says the audio recording reveals this escalation occurred prior to the arrest.

[80] It is the Crown's position that the investigation was lawful and Cpl. Norman was acting reasonably, therefore Mr. Park had no right to either resist the investigation or to cause a disturbance in doing so. Mr. Paradis supported Cpl. Norman's decision to require Mr. Park to provide identification on the basis that the information available to the police when they arrived was limited. They had been called to a disturbance or asked to assist in getting someone to leave the hospital. It was reasonable for Cpl. Norman to require the subject of the call to identify himself. Instead of complying, Mr. Park escalated his behaviour, and caused a disturbance, thereby giving Cpl. Norman grounds to arrest him.

[81] Mr. Paradis reminds the Court that it is not a question of whether Mr. Park could be convicted of causing a disturbance, but whether the grounds for his arrest were reasonable in light of Mr. Park's reaction to the officer's efforts to investigate: *R. v. Jir*. Based on that case, he says the standard of proof of the validity of the arrest is less than the civil standard. Mr. Paradis submits that the evidence establishes that there were a number of people present who were affected by Mr. Park's behaviour.

[82] For Paladin, Mr. Pearce submitted that firstly, the arrest was lawful. He takes the position that the guards were dealing with a trespass. They had received a request for assistance in the chemotherapy area and had asked Mr. Park to leave the hospital and he refused. Mr. Pearce points to the requirements in the **Trespass Act**, RSBC 1996, Chapter 46, that a person who is trespassing provide their identification, as justification for the request on the part of the police. He says that if Mr. Park had simply permitted them to conduct their investigation, they would have been able to determine whether he was arrestable and likely would not have had to do so. Mr. Pearce submits that as a matter of common sense, Mr. Park must come to court with clean hands. By his own admission he was committing the offence of trespass, and refused to provide his name and address.

[83] Mr. Pearce says that Mr. Park should not be able to claim damages for an arrest of his own making. It would not be fair for him to resist the lawful actions of the police under the **Trespass Act**, and then claim damages for an unlawful arrest



under the **Criminal Code**.

[84] The fact that the police were not aware that they were acting within the authority of the **Trespass Act** does not affect the existence of reasonable grounds, Mr. Pearce says, if the arrest is objectively lawful. On behalf of the guards he points to section 25 of the **Code**, which provides a defence to a person assisting a police officer involved in an arrest, regardless of whether the arrest is lawful. He relies on the case of **R. v. Galloway**, 2007 NSSC 71.

[85] Mr. Pearce further submits that the guards were authorized by the **Trespass Act** to remove Mr. Park, and thereby to come to the aid of the officers as they arrested him, under that **Act** or for another reason. He takes the position that it is immaterial under what authority the police were acting, his clients were entitled to intervene and assist in what appeared to be a lawful action on the part of the police.

[86] Mr. Park submits that he was not causing a disturbance in the hospital lobby, while dealing with Cpl. Norman. He points to the fact that the recording device was on his person, and his voice may have sounded proportionately louder than Cpl. Norman's for that reason. He says there were times, earlier than the point relied upon by Mr. Paradis, that the officer's voice was louder than his. He says Cpl. Norman overreacted and escalated the situation, causing a disturbance herself. He denies that he or his mother was trespassing. He says they were there for a legitimate medical purpose initially, and were in the process of leaving the chemotherapy area, to go and see the hospital president, when the police arrived.

[87] Mr. Park says the police did not need to have him identify himself because the hospital staff well knew who he was. He submits that because the officer did not ask him to leave or ask for his address, she was not acting under the **Trespass Act**. He points to the fact that the officer prevented him from leaving rather than requiring that he do so. He takes issue with whether there was in fact a disturbance in the lobby area. He says it was the police who caused the disturbance and that it is not an offence to cause a disturbance by resisting unlawful actions taken by the police.

[88] Mr. Park also submits that the police did not properly investigate the reason for the call, by speaking to any staff or to the oncologist before or after the incident.

He says this supports a conclusion that there was no legitimate complaint about his behaviour. Mr. Park says Cpl. Norman's assertion that he had caused a disturbance, when he had not, was made without grounds and she had no authority to demand his identification. He says her threat to arrest him if he did not produce it was made without justification.

[89] In relation to the actions of the guards, Mr. Park submits that they falsely asserted that they believed he was going to assault the police officer, which he says discloses improper motives on their part. He says it was their actions in putting him in a headlock that caused him to move forward and initiated the arrest.

[90] Mr. Park says the arrest was unlawful under Section 495 because the police did not find him committing an offence or have reasonable grounds to believe he had done so. He also says they did not need to arrest him to prevent the repetition or continuation of the offence. He says the evidence establishes that he would have left if he had been asked, and that was his plan, in any event. In relation to the suggestion that the police had authority under the **Trespass Act** to require him to produce identification, he says that he was present with the consent of the owners of the premises and had not been asked to leave.

[91] In reply, Mr. Paradis on behalf of the police officers submitted that the officers were not able to obtain information about whether Mr. Park was a trespasser or the subject of a complaint at the time when they arrived before he was pointed out to them. He concedes that Cpl. Norman did not subjectively form her grounds under the **Trespass Act**.

## 2. Use of Force

[92] In relation to the amount of force used, Mr. Paradis refers to Section 25 and submits that in light of Mr. Park's resistance, the officers and guards were permitted to use force. He says they did not use more force than was necessary in light of the fact that several witnesses described Mr. Park as trying not to get arrested, moving around, resisting, struggling, and lashing out. He says Cpl. Norman described a violent struggle and had to call a third officer to escort Mr. Park to the police station. .

[93] Mr. Pearce submits that the Paladin employees, being reasonably under the impression that the police were acting under their authority, were justified in

assisting the officers when Mr. Park resisted their efforts to take him into custody. He submits that the evidence does not establish any blows or strikes or anything in the nature of excessive force. Mr. Dich held Mr. Park's hand to prevent a punch, and Mr. Chow held his legs to prevent kicking. He says the guards did only the minimum expected of them, and could not have been expected to do any less.

[94] Mr. Park says the evidence does not support a conclusion that he acted aggressively or combatively when the officer attempted to arrest him. He says he was holding a bag and a thermos while speaking to the officers, which is inconsistent with the actions described by the defendants' witnesses. He says the force used to take him to the ground and hold him there was excessive and unnecessary. He says his eyeglasses went flying, indicating that there must have been some personal contact to his face. He challenges the officers' assertion that they used only soft hand techniques.

[95] Mr. Park submits that Cpl. Norman held her foot on his back unnecessarily while he was shouting in pain, and handcuffed. He says it was unnecessary for Cst. Stewart to hold his feet, as it was not proven that he was swinging his feet around, and the evidence shows that he went straight from a standing position to on the ground, being held.

[96] In relation to Paladin's involvement, Mr. Park says that it was unnecessary for the two guards to assist the police, and that to do so resulted in unnecessary or excessive force. He says the two police officers could have done the job alone, and said they did not need assistance. In particular, Cpl. Norman said she could have made the arrest without assistance. The guards jumped in unnecessarily, causing an unnecessary escalation of force and acting outside their authority.

### **3. Abuse of Authority**

[97] Mr. Paradis specifically addressed the potential tort of abuse of authority and submitted it had not been established. It is an intentional tort, which requires malice, acting knowingly without authority and with intent to injure. *Davis v. Abbott* sets out the factors required. He submits that the tort was not raised specifically by Mr. Park, and while it could pertain to his being kept in custody for an excessive length of time he did not plead that in his materials or raise it before the trial.

[98] Mr. Park says that the police were rude and disrespectful to him. By failing

or refusing to investigate why they were there, and assuming there was a disturbance when there was not, they were abusing their authority. He also submits that there is an element of discrimination based on race, in that Cpl. Norman tried to enlist his mother to “talk some sense into him,” which was a cultural affront.

[99] Mr. Park also takes the position that he was deliberately kept too long in a cell when there was no need to hold him. He says he was not told why it was necessary to detain him when the officer was just looking for his identification. He also says his rights were violated when his photograph was taken, his eyeglasses were taken away, and the police had discussions with hospital staff about him. These actions, he says, are indicative of malicious intent and a motive on part of the police not to release him but to hold him unduly in harsh conditions.

[100] Mr. Paradis submits in reply that Mr. Park has not established that his detention in cells was excessive. Section 497 prescribes when a person must be released after arrest without a warrant, for a summary conviction offence. It requires only that the release be effected as soon as possible, unless it is in the public interest that the person be further detained, for instance to establish identification, or to prevent a continuation or repetition of the offence. Mr. Paradis submits that Mr. Park was lodged because he had not been identified, the charges were being investigated, and he continued to be argumentative. It was reasonable for Cpl. Norman to conclude that he needed to cool off in a cell for a bit, and may pose a risk of returning to the hospital. He says Cpl. Norman explained what occurred during the four hours that Mr. Park remained in custody, and all of that was reasonable.

[101] He refers to *R. v. Storrey*, [1990] 1 S.C.R. 241, para. 25 which holds that it is not unlawful to arrest although the police intend to continue the investigation of the crime.

## Analysis

### 1. *Grounds for Arrest*

[102] Dealing firstly with the grounds for Mr. Park’s arrest, the first issue is whether Cpl. Norman was acting lawfully when she requested that Mr. Park produce his identification. It is important to observe that it is not submitted before

me that Cpl. Norman had grounds to arrest Mr. Park at that point. He had been pointed out as the person who was the subject of the call that she believed related to a disturbance.

[103] The evidence establishes that the call was actually a request for assistance in removing a person from the hospital, not a complaint of a criminal offence. It would however be natural for Cpl. Norman to have assumed that there was some kind of disturbance involving the person the hospital wished to have removed.

[104] I agree with Mr. Pearce's submission that the authority under which the police were acting, objectively, was the **Trespass Act**. While the evidence discloses some confusion about whether Mr. Park had actually been asked to leave the hospital, as opposed to the chemotherapy area, the police were entitled to assume he had been asked to leave, because that is what they were told.

[105] From Mr. Park's own perspective, I accept that he believed he had only been asked to leave the chemotherapy area. However, the guards remained with him, and he was told the police were attending. There is also evidence that Mr. Park was told by the guards not to leave. The evidence does not establish that they made any request after Mr. Park and his mother left the chemotherapy area, that they leave the hospital. From Mr. Park's perspective, he was not a trespasser at that point.

[106] Mr. Park's perspective is not relevant, however, to whether the guards or the police were acting lawfully in connection with the arrest. The relevant point of view is that of Cpl. Norman. She believed when she arrived that a man was the subject of a complaint in the nature of a disturbance. Mr. Park was pointed out by the guards as the subject. She approached him in an effort to investigate the complaint. She did not treat him as if he was a trespasser, nor did she appear to believe she was there to assist in removing him, or presumably she would have asked him to leave or accompany her outside. Moreover, when Mr. Park expressed a desire to leave her presence, to go to the president's office, Cpl. Norman said he could not leave until she had dealt with him.

[107] It is clear, therefore, that Cpl. Norman was not purporting to act under the **Trespass Act**, either objectively or subjectively. She relied upon the fact that she had been called to investigate a person who was causing a disturbance, and she

was acting under the **Criminal Code**.

[108] On Cpl. Norman's behalf it is submitted that she did not have time to establish the reason for the call because Mr. Park confronted her. I do not find that to have been established, on the evidence. In fact, it was Mr. Park who was confronted. He was immediately told he was under investigation for causing a disturbance. He reacted to that in a confrontative way.

[109] In my view, and in light of what would be a natural assumption that there had been some kind of disturbance, Cpl. Norman did have authority to detain Mr. Park for investigation at that point, and to require that he identify himself in the process of that. Detention for investigation requires that the officer have both an objective and a subjective belief in a set of circumstances that give rise to reasonable cause to believe an offence has or may have been committed. I find that existed here. The fact that the subjective belief in a disturbance and the objective fact of a trespass did not coincide is in my view immaterial. Cpl. Norman was entitled to detain Mr. Park to ascertain his identity.

[110] It is important however to distinguish between detention for investigation and identification, and arrest for refusal to cooperate: *R. v. Hall*, 2011 ONCJ 480, para. 67. The question in such a case is whether the refusal to cooperate has the effect of elevating the investigation into grounds for arrest. There are limited bases on which an arrest may be made in such circumstances. The one advanced by the Crown, here, is that Mr. Park created a disturbance by his reaction to Cpl. Norman's investigation. The one advanced by Paladin is that Cpl. Norman was authorized to arrest under the **Trespass Act**. Although neither defendant relies on the authority to arrest for obstruction, I propose to consider firstly the circumstances under which there is a power to arrest at common law for a refusal to provide identification, in order to place the positions of the defendants in context.

**a. Arrest for Refusal to Provide Identification**

[111] A refusal to cooperate with an investigative detention may become grounds for arrest is if the defendant becomes guilty of obstructing a police officer in the lawful execution of his duty. As I have noted, counsel did not argue that Cpl. Norman had grounds to arrest for obstruction. Presumably this entails a concession, proper in my view, that if Mr. Park had quietly responded, "I don't have to tell you my name," or "I don't have to give you any identification," he would not

have been guilty of a crime: **R. v. Guthrie**, (1982), 69 C.C.C. (3d) 216; **R. v. Virani**, 2011 BCSC 1032.

[112] It is clear that an obstruction will not be found where a person declines to respond to a request by a police officer that is not supported by a statutory duty to comply with it. In **Virani**, N. Brown J. stated:

94 ... The accused person must intentionally refuse to do something the legislation requires of them. The manner of their refusing must affect, though not necessarily finally frustrate, the officer in executing their duty. *The accused person must know the officer is executing a police duty and intend their actions to affect the officer's executing of it.* [Emphasis added.]

[113] Accordingly, the authority to arrest for obstruction depends upon the existence of a statutory duty to identify oneself, and recognition that the officer is executing that duty, or presumably, recklessness as to whether that is the case. The argument in relation to the **Trespass Act** may therefore be considered on its own, or as a foundation for an arrest for obstruction of a police officer executing her duty under that **Act**.

**b. Arrest under the Trespass Act**

[114] The **Trespass Act** gives a police officer statutory authority to require a trespasser to identify himself, and to arrest for a refusal to do so. The relevant sections are as follows:

[115] Section 4:

(3) Subject to section 4.1, a person who has been directed, either orally or in writing, by an occupier of premises or an authorized person to

(a) leave the premises, or

(b) stop engaging in an activity on or in the premises,

commits an offence if the person

(c) does not leave the premises or stop the activity, as applicable, as soon as practicable after receiving the direction...

[116] Section 8:

(1) On the demand of an occupier of premises, or an authorized person, who has reasonable grounds to believe that a person is on or in the premises, or was on or in the premises, in contravention of section 4 (1) (a), (b) or (c) or (3), the person must provide the occupier or authorized person with his or her correct name and address.

[117] Section 10:

(2) A peace officer may arrest without warrant any person found on or in premises if the peace officer believes on reasonable and probable grounds that the person is committing an offence under section 4 in relation to the premises.

[118] Cpl. Norman was not relying on her authority under the **Trespass Act**, nor did the Crown advance it as justification for the arrest. In light of Mr. Pearce's submission that Cpl. Norman would have been justified in requiring Mr. Park to identify himself under the **Trespass Act** and arresting him for refusing to do so, I have nonetheless considered whether the arrest in this case may be upheld on that basis.

[119] In my view, the problem with a finding that the arrest *could have been* made lawfully is that it does not meet the **Storrey** criteria for reasonable grounds. To be a lawful arrest, the arresting officer must have both a subjective belief in grounds and objective support for that belief. Here, the subjective component for an arrest under the **Trespass Act** is clearly missing. Cpl. Norman did not understand or believe that she was acting under that authority. Although Cst. Stewart had the belief that they were there to deal with a trespasser, he did not articulate any understanding of the authority under the **Act**, nor is his state of mind the governing factor.

[120] Moreover, an arrest under the **Trespass Act** does not fit the facts of how Cpl. Norman proceeded in conducting the arrest. She told Mr. Park he had been



causing a disturbance, when that complaint had not in fact been made. He reacted with denial, not surprisingly. She told him he had to identify himself in connection with her investigation of that offence, one for which she did not have grounds for arrest. While as I have said she was entitled to ask for identification as part of her **Criminal Code** investigation into whether a disturbance had been caused, Mr. Park was entitled in the absence of a statutory duty to refuse to provide it.

[121] At this point, the actions of the police and guards, and Mr. Park's mindset become relevant. Mr. Park must have been aware, or reckless, as to whether he had a statutory duty to identify himself, to be arrestable for obstruction. Looking at it from Cpl. Norman's perspective, she must have believed and had an objective foundation for believing that Mr. Park was obstructing her by violating the **Trespass Act**, in the absence of any other foundation for an arrest for refusal to identify himself. I am mindful of the fact that the issue is whether there were grounds, on a balance of probability, or perhaps as Mr. Paradis submits, a lesser standard.

[122] The problem with such a finding, however, is that Cpl. Norman did not tell Mr. Park that she believed he was trespassing or that he had to leave. In fact, she made him stay. She did not confirm with the guards in Mr. Park's presence that they wished him to leave. The guards did not tell Mr. Park to leave, in her presence. No one articulated the reason for the presence of the police beyond what Cpl. Norman said about a disturbance.

[123] Importantly, in my view, Cpl. Norman did not tell Mr. Park that he was obliged to identify himself because he was a trespasser and/or that the **Act** required it. There is simply no suggestion that the guards or the police were acting under the **Trespass Act**, at the point when the arrest occurred.

[124] There is no basis for a finding either that there were objective grounds for an arrest under that Act, or that the arresting officer subjectively believed there were. Whatever the standard of proof, I cannot find in the circumstances that Cpl. Norman satisfied the **R. v. Storrey** criteria for the making of a lawful arrest under the **Trespass Act**, in connection with Mr. Park's refusal to provide identification. It would be inappropriate, in my view, to find a defence under authority that the officer either did not know existed or declined to utilize in effecting her arrest.

### c. **Arrest for Causing a Disturbance**

[125] It is the submission of the Crown that Mr. Park's behaviour in refusing to cooperate with Cpl. Norman's investigation itself caused a disturbance, thereby justifying the decision to arrest. The cases cited by the Crown, however, are not of assistance because all involve an arrest for a disturbance that existed before the contact with the police. That is not what is asserted here. It is that in resisting Cpl. Norman's attempts to obtain his identification and investigate the complaint, Mr. Park behaved in a fashion that disturbed others using the hospital, and amounted to a criminal offence.

[126] A case with relevance to the facts here is found in *R. v. Walker*, 2006 OJ No. 2840 (S.C.). The officer in that case was convicted of assault causing bodily harm, notably entailing a much higher standard of proof. The complainant had resisted the officer's attempts to obtain his identification by calling the officer a racist and "venting" at him on a public street. A crowd gathered, and the officer decided to arrest the complainant for causing a disturbance. The complainant resisted and was injured in the ensuing altercation.

[127] The trial judge's decision on this point is summarized as follows in the appeal decision:

**12** ...the trial judge observed that the complainant had made loud objections to the appellant that caused ... civilians and others to stop and observe the situation. The trial judge then went on to conclude that the disturbance was instigated by the appellant's unlawful detention of the complainant and that the arrest for causing a disturbance was not lawful.

[128] At first glance it might seem that this case is distinguishable from *Walker* on the basis that the trial judge found the detention of the individual to be unlawful. However, the appeal court observed as follows:

**23** ... and in any event, I agree with the respondent's principal submission that the issue of whether or not there was a detention is largely irrelevant to the main issue - that is whether the appellant was engaged in the lawful execution of his duty as a peace officer in arresting the complainant and in using reasonable force in so doing.

[129] The Court goes on to consider the case of *R. v. Lohnes* relied upon by the Crown in this case, and then further states:

**29** In this case, the trial judge, in reaching her conclusion that the complainant did not cause a disturbance in the particular circumstances of this case, said:

"[The complainant's] loud objections to being stopped and questioned caused the civilians who resided on Tretheway to stop and observe the situation. [The appellant] was also disturbed by [the complainant's] loud comments. However, the disturbance was instigated by [the appellant's] unlawful detention of [the complainant]. It is unfortunate that [the complainant] used insulting language, but his actions did not constitute criminal behaviour. His arrest for causing a disturbance was not lawful."

**30** It is implicit in the trial judge's reasons that she did not find that there was an "externally manifested disturbance" on the specific facts that were before her. While certain people in the immediate area clearly had their attention drawn to the encounter between the complainant and the appellant, there was no evidence that this encounter rose above the normal forms of activity that can occur on our streets on any given day that may "disturb and annoy others sharing the public space". As the respondent aptly points out "attracting curiosity is not synonymous with causing a disturbance".

[130] Importantly, the Court went on:

**34** It would have the proverbial "chilling effect" on the rights of citizens to object to such abuse by police officers if the consequences of objecting were to be for the objectors to then find themselves charged with a criminal offence such as causing a disturbance. In so concluding, I do not mean to condone the conduct of the complainant regarding the manner in which he chose to express his objections. I, like the trial judge, find his use of insulting language towards the officer disturbing. However, it

remains the fact that, however objectionable the conduct of the complainant may have been, on the facts before the trial judge she was entitled to find, as a fact, that it did not rise to the level of causing a disturbance nor could the appellant reasonably have concluded that it did.

[131] The *Walker* case was upheld on appeal to the Ontario Court of Appeal. In brief reasons the Court endorsed the above passage and stated:

5 Even if there was a "disturbance," in common parlance, there was no "disturbance" within the meaning of the *Criminal Code* in this case. *The trial judge found that the appellant had no right to continue investigating or questioning the complainant.* While the complainant's loud and rude protestations may have been "disturbing" to some, they did not constitute reasonable grounds for the appellant whose improper actions instigated the exchange to believe there was a criminal disturbance. [Emphasis added.]

[132] Leave to appeal was refused by the Supreme Court of Canada: *R. v. Walker*, [2007] S.C.C.A. No. 177.

[133] Based on the above passages, the fact that I have found the initial detention of Mr. Park lawful does not assist in characterizing his actions in resisting the request a disturbance. I have found that he was entitled to decline to produce identification to Cpl. Norman because she was not exercising a statutory duty in requesting it from him. It is clear from the evidence that the escalation of Mr. Park's behaviour was a direct result of Cpl. Norman's repeated assertions that he had caused a disturbance, which she did not know and he denied, and repeated demands for identification. Before her intervention, there was no disturbance. Similarly to the Court of Appeal's observation in *Walker*, Cpl. Norman had no right to continue investigating or questioning Mr. Park, in light of his refusal to identify himself. As I have noted, Cpl. Norman could have exercised her authority under the *Trespass Act* by asking Mr. Park to accompany her outside. If he had resisted, she could have arrested him then. The arrest was precipitous and unnecessary, and it was made without legal grounds, in my view.

[134] The disturbance in this case is on no different footing than the one caused in *Walker*, in my view. I cannot find that the Crown has shown on a balance of

probabilities, or that the evidence supports a finding, that Cpl. Norman had grounds to arrest Mr. Park for causing a disturbance.

## 2. *Involvement of Paladin*

[135] The evidence of Mr. Dich supports a conclusion that he may actually have initiated the physical portion of the arrest by grabbing Mr. Park's upheld arm when he perceived that Mr. Park was going to strike the officer. Cst. Stewart also said that he grabbed one arm. Although I have some doubt as to the sequence of events, the evidence supports a conclusion that Cpl. Norman had by this point told Mr. Park she was arresting him and taken out her handcuffs.

[136] In my view it is relevant that the security guards, in particular Mr. Dich, believed that Mr. Park had been asked to leave and was refusing to do so. Those working for Paladin were under the impression that the police were there to assist them with a trespasser, and their actions must be viewed in that context. I agree with Mr. Pearce's submission that the guards were entitled to rely on an assumption that the police were acting lawfully in the execution of their duty.

[137] At the time when Mr. Park's arm went up, or away from Cpl. Norman's reach, Mr. Dich was entitled to conclude he was resisting a lawful action, and as the occupier or their agent, he was entitled to intervene to assist in either an arrest or a removal under the *Trespass Act*. The other guards, in particular Mr. Chow, joined in to subdue Mr. Park, perceiving that he was resisting a lawful arrest. They adhered to their policy of not going "hands on" until police had intervened and appeared to need assistance. They are not clothed with knowledge that the arrest was made without grounds: *R. v. Galloway*, cited above. While they were present and observed the actions of Cpl. Norman, they are not trained peace officers and their failure to recognize that the arrest may not be lawful should not be a basis for civil liability.

[138] I agree as well with the submission of Mr. Pearce that the guards were acting on reasonable grounds and the defence under section 25 of the *Criminal Code* applies here.

## 3. *Excessive Force*

[139] I do not find that the evidence supports a finding of excessive force. There

is no evidence of blows struck or actions taken unnecessarily. The evidence establishes that Mr. Park resisted the efforts of the police to arrest him. He was entitled to do so; however, the issue of degree of force is a separate issue and must be considered from the standpoint of what would be reasonable if the arrest were lawful.

[140] The police officers and the guards did what would be expected in the case of a resistant subject, and no more. The force used was minimal and justified. Of course, this does not save the police from liability for an unlawful arrest, but if I am wrong in that finding, I would not find liability based on excessive force in the context of a lawful arrest.

#### 4. Detention at Police Station

[141] As I have indicated, I agree with the submissions of Mr. Paradis that the tort of abuse of authority was not an area that was thoroughly canvassed either in the evidence or in Mr. Park's submissions and it has not been separately established. In any event, I am satisfied there is no factual foundation for a finding that Cpl. Norman abused her authority. The issue is analogous to the question under section 21(3) of the *Police Act* of whether the officer is guilty of dishonesty, gross negligence or malicious or wilful misconduct. It may also have some relevance to damages: *Sipes v. West Vancouver*, 2009 BCPC 378, para. 54. On these facts, however, I would not find that Cpl Norman acted maliciously or for any improper motive in arresting Mr. Park; nor was she grossly negligent.

[142] The length of Mr. Park's detention therefore has relevance only as one of the facts occurring in the context of his unlawful arrest. In my view, Cpl. Norman was negligent in the manner in which she dealt with Mr. Park at the hospital and that negligence continued through his stay at the detachment. I would call it inattentiveness to his rights, as a general description, though I am not finding nor relying upon any breach of his *Charter* rights. Cpl. Norman should have been more careful about her grounds for arrest, the authority under which she attended the hospital, and the manner in which Mr. Park was treated after his arrest. Keeping him more than four hours was completely unnecessary; particularly the portion of that which related to her attendance in court on another matter.

[143] Once Mr. Park was identified, he should have been released, as Cst. Stewart says he would have done. It was no longer necessary for him to be

detained for the purposes enumerated in section 495. It was not necessary for the RCMP to facilitate the hospital's desire to provide Mr. Park with a letter of expectation. There was no suggestion, on the evidence, that Mr. Park would return to the hospital or create a disturbance there. He was behaving like someone who had been treated improperly, not like someone who wanted to disrupt the hospital's operations. I find that the length of Mr. Park's detention at the police station is a fact to be taken into account in assessing the degree of negligence on the part of the RCMP and the extent of interference with Mr. Park's liberty.

## Conclusion

[144] I find that the arrest of Mr. Park was unlawful and that Mr. Park has established liability of the Crown defendant, the RCMP and its representatives, for wrongful arrest and false imprisonment. The claim against Paladin Security is dismissed. Mr. Park and counsel for the RCMP may arrange a date to appear before me to make submissions as to damages and costs, any time prior to the end of April, 2012.

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The Honourable Judge C. Baird Ellan  
Provincial Court of British Columbia