

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

OCT 07 2016



S-169302

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

BENJAMIN MONTGOMERY ROBINSON

Plaintiff

and

**THE ATTORNEY GENERAL OF CANADA AND THE MINISTER OF JUSTICE FOR
THE PROVINCE OF BRITISH COLUMBIA**

Defendants

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Benjamin Montgomery Robinson ("Robinson" or the "Plaintiff"), was a member of the Royal Canadian Mounted Police ("RCMP"), residing in Delta, British Columbia and has an address for delivery at Suite 211, Lincoln Centre, 3030 Lincoln Avenue, in the city of Coquitlam in the province of British Columbia, V3B 6B4.
2. The Attorney General of Canada is a defendant as a result of the acts and omissions by the RCMP, pursuant to the provisions of the *Royal Canadian Mounted Police Act* RSC 1985 c R 10, as amended, and the *Crown liability and Proceedings Act* RSC 1985 c C-50.
3. The Minister of Justice for the province of British Columbia is a defendant as a result of the acts and omissions by or on behalf of the RCMP, pursuant to the provisions of the *Royal Canadian Mounted Police Act* RSC 1985, as amended, and the *Crown Proceedings Act* RSC 1996 c 89, as amended.
4. The RCMP employed the Plaintiff as a Peace Officer after graduating from the RCMP Depot (the "Depot") on 29 July 1996.
5. Immediately upon graduation from the Depot, the RCMP assigned Robinson to Chase, BC, where he remained for seven years until the RCMP transferred him to Merritt, BC, on or around July 2003.
6. On or around March 2004, the RCMP promoted Robinson from Constable to Corporal.
7. On or around August 2005, the RCMP transferred Robinson to Richmond, BC, where as a Corporal he was assigned to a Watch.

8. On or around April 2007, the RCMP transferred the Plaintiff to the Vancouver International Airport sub- detachment ("YVR Sub-detachment"). At this time, the RCMP assigned the Plaintiff supervisory responsibilities for six members, in addition to supervision of policing duties at the YVR detachment.

9. During the last 8 years of 16 year career with the RCMP, Robinson held the rank of Corporal.

10. During his tenure with the RCMP, Robinson was held in high regard, his positive standing within the RCMP was documented in promotion and performance evaluations in 2003, 2004 and 2008.

14 October, 2007

11. On 14 October 2007, the Plaintiff was the duty supervisor for the RCMP's YVR Sub-detachment.

12. On 14 October 2007, Robinson, along with three RCMP constables Gerry Rundel ("Rundel"), Bill Bentley ("Bentley"), Kwesi Millington ("Millington"), responded to a police radio broadcast stating that there was a male behaving violently at the Vancouver International Airport. While en route, the Plaintiff received a subsequent radio update indicating that the male was acting erratically and smashing items in the International Arrivals area of YVR.

13. From the outset of receiving the 911 calls, the following events unfolded in quick, rapid succession.

14. As the assigned Corporal on the Watch, the Plaintiff, assumed a supervisory and leadership role and maintained this role until there was a need to intervene in another capacity. As the events unfolded, Robinson restricted the male's access to the luggage area.

15. The Plaintiff ordered the junior officer on three occasions to deploy a conducted energy weapon ("CEW," also known as a "Taser") in order to de-escalate the situation and subdue the agitated individual, while also protecting the public and the RCMP Members from potential harm.

16. In the course of attempting to subdue the agitated individual, the Taser was deployed five times, which unfortunately resulted in Mr. Dziekanski's death while attempting to take him into police custody.

17. In compliance with RCMP Policy, Robinson instructed the junior officers to obtain witness statements, seize evidence and photograph the scene.

18. Pursuant to the RCMP policy regarding in-custody deaths, Robinson ensured that the Integrated Homicide Investigation Team ("IHIT") was notified.

19. One of the investigating officers notified Robinson that a bystander had a video recording of the RCMP's intervention with Mr. Dziekanski. Consequently, Robinson directed the investigating officer to seize as evidence the video from the bystander who had made it.

20. Subsequently, Robinson informed his supervisors about the events and ensured that the integrity of the scene was preserved until IHIT arrived. Robinson remained at the scene with the IHIT investigators; meanwhile, the Plaintiff ordered Rundel, Bentley and Millington to return to the YVR Sub-detachment.

21. After the IHIT investigators arrived at the scene, the RCMP dispatched RCMP Members from the Richmond Detachment to relieve the Plaintiff, Rundel, Bentley and Millington.

22. Accordingly, Rundel, Bentley and Millington returned to the YVR Sub-detachment.

23. However, the Plaintiff remained on the scene with the IHIT investigators. Upon completion of the on-scene tasks, Robinson along with the IHIT investigators returned to the YVR Sub-detachment.

24. Robinson prepared and provided a statement to an IHIT investigator within a few hours after the investigation began.

25. The only statements the Plaintiff provided to police investigators were on 14 October 2007 and 19 October 2007.

26. Aside from providing statements and facilitating the review of his contemporaneous notes, Robinson was not involved in any aspect of the police investigation into Mr. Dziekanski's death.

MEDIA COVERAGE

27. The information the police disclosed to the media with regards the investigation into Mr. Dziekanski's death was the result of a bilateral approach between the Wayne Rideout, Superintendent, Officer-in-charge ("OIC") of IHIT and the RCMP's media relations officer in BC for "E"-Division ("E-Division").

28. At the material time, Sergeant Pierre L¹ was the media relations officer in BC for the E Division.

29. As there was an active, ongoing police investigation, the RCMP's media protocol required that the Officer-in-Charge determine what information to release to the media.

30. Accordingly, the OIC of IHIT provided Sergeant Pierre L² with the "information" that he had authorized to disclose to the media.

31. On 14 October, 2007, Sergeant L held the first media press conference with respect to the police investigation into Mr. Dziekanski's death. Misinformation was disclosed to the media at that time and, shortly thereafter, Sr. RCMP Administrators within E Division deemed it to be factually incorrect.

32. Consequently, Sergeant L sought approval through the chain-of-command to correct the misinformation disclosed to the media during the first press conference. The OIC of IHIT ordered Sergeant L not to correct the misinformation that had been disclosed to the media.

33. On or around 16 October, 2007, the RCMP removed Sergeant L as the RCMP's media liaison person in E Division with respect to the police investigation into Mr. Dziekanski's death. Subsequently, Sergeant Pierre L³ committed suicide on 29 July 2013.

34. Public interest continued to grow, attracting coverage in both national and international media.

35. The OIC of IHIT restricted any further public communication regarding the evidence gathered with respect to the police investigation into Mr. Dziekanski's death.

36. The media coverage was critical of the four attending officers' conduct; the use of force, including the use of the Taser; and alleged that the RCMP had engaged in an organizational coverup of the attending RCMP Members' wrongdoing.

37. The initial media interest peaked on 14 November 2007 following the public disclosure of the bystander's amateur video recording of the RCMP Members' intervention with Mr. Dziekanski. The video recording was inconsistent with the misinformation the OIC of IHIT authorized to be disclosed to the media by Sergeant L on 14 October 2007.

38. The bystander who made the video recording made multiple requests to have the video recording released publicly. However, the video recording was not released until a successful application by legal counsel representing the bystander who made it.

39. On or about November 2007, the RCMP assigned the Plaintiff to work at a Vancouver 2010 Olympics location in Richmond. The RCMP issued this work assignment after the video recording was released publically.

40. On or about February 2008, the RCMP assigned the Plaintiff to work at another Vancouver 2010 Olympics posting. As a result of the frequency and intensity of the media coverage surrounding the YVR incident, the RCMP provided the Plaintiff with limited employment placement options.

41. The IHIT police investigation into Mr. Dziekanski's death concluded that the Plaintiff, as well as the other RCMP Members who responded to the report of an agitated male at YVR, acted in accordance with the RCMP's training.

42. The RCMP's failure to correct the misinformation disclosed on the public record created an increased amount of public interest and scrutiny, as well as the perception of a cover-up and allegations wrongdoing by the Plaintiff and other RCMP Members who initially responded to the call for assistance..

43. In this regard, the Plaintiff, along with the other three RCMP members, were subject to public hostility, death threats, and contempt while their policing careers and professional reputations languished.

44. Robinson is of First Nations descent, the misinformation with respect to the Plaintiff's conduct brought shame upon his Band and his community.

45. In this regard, Robinson experienced strained interpersonal relationships with family members, including his minor children.

46. The Plaintiff's mental health deteriorated during this time, accordingly he sought professional healthcare to manage symptoms consistent with undiagnosed post traumatic stress disorder and alcoholism.

47. On or about 3 January 2008, the Plaintiff submitted a request for legal services at public expense, with the assistance of an RCMP Staff Relations Representative (SRR).

48. On or about 13 March 2008, the Plaintiff, Bentley and Rundel met with Helen Roberts ("Roberts"), Department of Justice, Superintendent Mike Aubry ("Aubry"), OIC of Employee and Management Relations for E Division, Inspector Rendall Nessel ("Nessel"), and Mike Ingles, SRR.

49. During this meeting, Roberts, Aubry and Nessel provided confirmation that the Plaintiff, Bentley and Rundel had not engaged in wrongful conduct. Further, the Plaintiff, Bentley and Rundel received assurances during this meeting that there was no conflict or discord between them and their position and RCMP and its position with respect to their conduct.

50. The objective of this meeting was to prepare for the public inquiry into Mr. Dziekanski's death

51. During this meeting, the Plaintiff was notified that he, along with the other RCMP Members, would receive joint representation during the inquiry by the legal counsel at the Department of Justice. In this regard, Robinson and the other RCMP Members were advised that the RCMP would not approve funding for each individual RCMP Member to be represented by individual legal counsel.

52. At this time, the Plaintiff was notified that he would be required to provide oral testimony at the upcoming inquiry. Similarly, the Plaintiff was provided with assurances that he would face no personal jeopardy in testifying during the public inquiry.

53. The Plaintiff maintained that he wished to be represented by his own independent legal counsel, separate and apart from counsel from the Department of Justice representing the RCMP. The Plaintiff's stance initiated a protracted dispute with the RCMP for funding of the legal representation.

54. The Crown's Criminal Justice Report considered whether the evidence gave rise to criminal charges. This report concluded that the evidence of the RCMP Member's conduct at fell remarkably short for meeting the standard required for Crown Counsel's approval of a criminal charge against the Plaintiff and the other RCMP Members who responded to the call for assistance.

55. On or about the end of April 2008, the Plaintiff received authorization for legal assistance at the public expense.

56. On or about 23rd of December 2008, the Plaintiff received email correspondence from the legal counsel from the Department of Justice indicating that the Provincial Crown had not approved any criminal charges against him. Further, the correspondence from Crown Counsel indicated that reconsideration of the Plaintiff's request for funding for representation by independent legal counsel was ongoing for the purposes of the public inquiry.

57. On 14 January 2009, Mike Ingles, RCMP Staff Relations Representative notified the Plaintiff that funding had been approved for him to be represented by independent legal counsel for the purposes of the public inquiry.

58. On or about 12 February 2009 (prior to the commencement of the public inquiry, and the Plaintiff's testimony therein), the RCMP released a public statement with respect to the use of Tasers, which claimed that that Tasers can kill agitated subjects.

59. The effect of this isolated statement without the inclusion of context provided an opportunity for the public to reach an unfounded conclusion about the RCMP Members' use of the Taser, specifically that it was wrongful and excessive in the circumstances. Furthermore, the release of this public statement served to further maligned the Plaintiff in the media and it the public's perception of the Plaintiff, both of which re-occurred within weeks of his testimony during the public inquiry.

MOTOR VEHICLE ACCIDENT

60. On or about 26 October 2008, the Plaintiff, while off-duty, was operating a motor vehicle which was involved in a motor vehicle accident in the City of Delta, BC. The motorcycle driver who was involved in the motor vehicle accident with the Plaintiff was fatally injured.

61. At the time of the motor vehicle accident, the Plaintiff's minor children were passengers in his vehicle. In order to avoid further trauma to his minor children, the Plaintiff left the scene of the motor vehicle accident to return his children home safely. While at his residence, the Plaintiff consumed alcohol before returning to the scene of the motor vehicle accident.

62. The motor vehicle accident investigation determined that the deceased motorcycle driver had a blood alcohol level of 170 mg and was operating the vehicle at a speed of 96 kms./hr in a zone where the speed limit was 50 km./hr.

63. The motor vehicle accident investigation did not result in the issuance of a motor vehicle traffic violation to the Plaintiff for his part in the accident.

64. Nevertheless, the Plaintiff was charged with obstruction of justice with regards to his consumption of alcohol subsequent to the motor vehicle accident.

65. On 27 July 2012, the Plaintiff was convicted of obstruction of justice and received a one-year conditional sentence, including one month of house arrest, a curfew, a requirement to report to a probation officer, and a \$1,000.00 victim surcharge.

66. During this period, Mike Ingles, SRR notified the Plaintiff that his perjury funding would be in jeopardy if he made any public comments regarding the motor vehicle accident, particularly the motorist's rate of speed or alcohol level. Subsequently, on 27 July 2012, Mike Ingles, SRR reiterated to the Plaintiff that he is prohibited from commenting on the Inquiry or the conduct of the Crown.

PUBLIC INQUIRY

67. The Plaintiff provided viva voce testimony at the public inquiry into Mr. Dzienkanski's death between 23 March 2009 to 25 March 2009 inclusive.

68. Cpl. G, an RCMP Use of Force Instructor, had provided training to the Plaintiff and the other RCMP Members on the use of the Taser. He testified during the public inquiry

that the conduct of the Plaintiff and the other RCMP Members who responded to YVR on the day in question was consistent with their RCMP training.

69. On or about March 2009, a meeting occurred between Mike Ingles, SRR for the Plaintiff and the other RCMP Members and Mr. Gary Bass, the Commanding Officer ("CO") of E Division. During this meeting the SRR urged the CO of E Division to make a statement publically supporting the Plaintiff and the other RCMP Members. Mr. Bass declined to provide a statement publicly supporting the Plaintiff and the other RCMP Members stating that he did not wish to interfere with the public inquiry.

70. On or about 19 June 2009, the public inquiry adjourned unexpectedly to follow up with regards to some email correspondence.

71. On or about 22 June 2009, Mike Ingles, SRR, notified the Plaintiff that Mr. William Elliott, the Commissioner of the RCMP had ordered that members were restricted from making public comment with regards to the public inquiry.

72. On or about 18 June 2010, the public inquiry report was released, which subjected the testimony of the Plaintiff and the other RCMP Members to significant scrutiny and criticism. Following the release of the public inquiry report, a special prosecutor was appointed to review the evidence given during the public inquiry.

73. The review by the Special Prosecutor resulted in the perjury charges against the Plaintiff and the three of the other RCMP Members who responded to the call for assistance at YVR on the day in question.

PERJURY CHARGE

74. On or about 11 May 2011, the Plaintiff was charged with perjury with respect to the testimony he gave during the public inquiry into Mr. Dzienkanski's death.

75. On 6 November 2012, the Plaintiff received written confirmation from the RCMP that his request for funding for independent legal counsel had been approved.

76. Various representatives of the RCMP provided repeated warnings to the Plaintiff throughout this period that any public comment by him would result in immediate withdrawal of public funding for independent legal counsel.

77. On or about 20 March 2015, the Plaintiff was convicted of perjury and received a sentence of two years less a day, one year probation, and 240 hours community service.

78. The Plaintiff's perjury conviction is currently under appeal and is scheduled to be heard in the BC Court of Appeal in October 2016.

79. During the course of these events, the RCMP has continued to make public statements that characterized negatively the Plaintiff's conduct.

RCMP PUBLIC COMMENTS

80. On or about January 2010, Mr. William Elliott, the Commissioner of the RCMP, gave television interview during which he provided inaccurate and misleading statements regarding the RCMP training policies with respect to the Use of Force and use of the Taser.

81. On or about 1 April, 2010, Mr. Bass, the CO of E Division for the RCMP, publically apologized to Mr. Dziekanski's mother.

82. The apology occurred two years after Mr. Dziekanski's death, but prior to the delivery of the public inquiry report. The apology had the effect of signalling to the public that the Plaintiff and the other RCMP members responding to the call for assistance at YVR on the day in question had engaged in wrongful and blameworthy conduct.

83. On or about 15 December 2010, Mr. William Elliott, the Commissioner of the RCMP, publically agreed with the findings of the public inquiry report, stating in part:

I agree with the findings of the conduct of the three officers as well as Cpl. Robinson, fell short of that expected of members of the RCMP and that they did not adequately attempt to de-escalate the situation, nor did they approach a situation with a coordinated and measured response. In particular, Cpl. Robinson should've provided direction to the other members in developing a coordinated approach and communicate effectively as the events unfolded. As indicated in the report, Cpl. Robinson's failure to do so negatively manifested itself throughout the interaction with Mr. Dziekanski.

Although it was not intentional, and it was perhaps at the direction of others, I also agree that it was not appropriate for the members to meet alone at the Vancouver international airport sub detachment office following the death of Mr. Dziekanski.

RCMP PUBLIC CRITICISM OF MEMBERS

84. On or about 22 July 2010, Mr. Bob Paulson, Assistant Commissioner issued and circulated a document titled, "Organizational Response to Discipline in the YVR Matter".

The public inquiry findings were included in this document, along with the position that the RCMP erred by not pursuing Code of Conduct proceedings against the members.

85. Following the release of this document, the RCMP engaged in a pattern of conduct with the apparent objective of satisfying the perceived public appetite for accountability.

86. On or about 15 December 2010, Mr. William Elliott, the Commissioner of the RCMP, provided a public statement in response to the public inquiry report and the Commission for Public Complaints (CPC). With reference to the Plaintiff and three of the RCMP Members who responded to YVR, in which the Commissioner stated that the Plaintiff and the other RCMP Members had “fallen short of their duties and acted inappropriately by meeting alone at the YVR sub detachment office”.

87. On or about 28 May 2012, Mr. Bob Paulson, the RCMP Commissioner, released a statement which reads in part as follows:

“The RCMP has a long history of serving Canadians most of it good some of it not desirable...The not desirable is the few rotten apples you hear about on the news who demonstrate unacceptable behaviour. Sometimes this behaviour is met with punishment that just does not cut it.” “Unfortunately, more historical cases and cases already underway will come out and make the news.” “They are the inheritance of past behaviours and attitudes.”

88. Similarly, on or about 28 May 2012, Mr. Bob Paulson, the Commissioner of the RCMP, circulated an email to members stating:

“The media are seeking and have obtained several records of decision in a number of recent and historical cases, as is their right. I expect salacious and troubling details of member misconduct to surface and be the source of much criticism of the force. There are other difficult cases as well that may get a lot of attention: The Vancouver Special O case which was extensively covered; the K Division case that saw a constable be convicted of 14 criminal charges including criminal harassment, extortion and mortgage fraud; and the persistent matters arising from the tragic death of Mr. Dziekanski at YVR. Sadly there is a lot to choose from if you want to criticize us.”

89. The correspondence included in the email as set out above was leaked to the media and reported widely.

90. On or about 27 July 2012, Craig Callens, the Deputy Commissioner provided a public statement to a local newspaper stating that, if the Plaintiff had not quit, he intended to fire him.

91. The Deputy Commissioner made these comments after approving of the Plaintiff's medical discharge on 20 July 2012.

CODE OF CONDUCT

92. Section 38 of the *RCMP Act* sets out that the Governor in Council may make regulations, to be known as the Code of Conduct governing the conduct of members.

93. Similarly at section 39(1) of the *Act*, it establishes that every RCMP Member who is alleged to have contravened a provision of the Code of Conduct may be dealt with under the RCMP Act either in or outside of Canada,

- a. whether or not the alleged contravention took place in or outside of Canada; and
- b. whether or not the member has been charged with an offence constituted by, included in or otherwise related to the alleged contravention or has been tried, acquitted, discharged, convicted or sentenced by a court in respect of such offence.

94. The RCMP did not initiate Code of Conduct proceedings against the Plaintiff nor against the other RCMP Members who responded to YVR on the day in question.

95. The RCMP's internal investigation into Mr. Dziekanski's death determined that the Plaintiff's conduct did not breach his obligations under the *Act* and Regulations thereto. The RCMP reached this conclusion based on a common belief and understanding, its own internal investigation and legal opinions it sought and obtained.

96. In December 2010, the RCMP initiated a negative Performance Log (RCMP Form #1004 ["Performance Log"]) against the Plaintiff. The language contained in the Performance Log was drafted in consultation with Mr. William Elliott, the Commissioner, Mr. Gary Bass, Commanding Officer, Mr. Darrell Madill, Deputy Commissioner, Mr. Peter German, Assistant Commissioner and Mr. Peter Hourihan, Assistant Commissioner.

97. The Performance Log outlined that the Plaintiff's conduct as the supervisor in the Police Incident required improvement, specifically:

- a. his report writing;
- b. his level of insight into optics with regards to appearing at the Richmond Detachment with the other RCMP Members who responded to YVR on the day in question; failing to provide a sufficient level of care to Mr. Dziekanski; and
 - i. failure to exercise control regarding the RCMP response, including, but not limited to, supervising the RCMP Members under his command, ensuring adequate communications, and utilizing appropriate de-escalation options.

98. The Performance Log confirms that the Plaintiff had not been disciplined at any time with respect to his conduct in responding to the call for police assistance at YVR on the day that Mr. Dziekanski died.

99. The Plaintiff filed a grievance contesting the negative Performance Log, which was resolved successfully in Mr. Robinson's favour during the Early Resolution phase of the grievance process. In his grievance, the Plaintiff contended that

- a. the four RCMP Members did not meet inappropriately at the sub-detachment;
- b. S/Sgt. Ingles was present at the Richmond sub-detachment with the other three RCMP Members who responded to YVR, during which time the Plaintiff was with IHIT at YVR;
- c. Subsequently, the Plaintiff returned to the Richmond sub-detachment in the company of the IHIT members;
- d. S/Sgt. Ingles notified the Commissioner directly by email regarding these key aspects of the events leading up to Mr. Dziekanski's death; and
- e. Despite being aware of evidence to the contrary, the RCMP accepted the findings from Braidwood and Kennedy (Commission for Public Complaints Against the RCMP) inquiries, that the Plaintiff and the three other RCMP Members met together at the Richmond sub-detachment.

100. The agreed statement of facts between Supt. Nessel and the Plaintiff with respect to Mr. Robinson's grievance contesting the negative Performance Log are as follows:

- a. that the service of the negative Performance Log upon Mr. Robinson exceeded the two-year retention period for the RCMP Member service file;
- b. the failure to discuss the negative Performance Log with Mr. Robinson at the material time; and
- c. the negative Performance Log was served on Mr. Robinson 38 months after the altercation during which Mr. Dziekanski died, and such late service was contrary to the Career Management Policy Manual.

101. While making negative comments publicly about the Plaintiff and the other RCMP Members involved in the YVR Incident, the RCMP's internal communication confirmed, repeatedly, that the Plaintiff's conduct was consistent with the training he received from the RCMP.

102. On or about 28 May 2013, Inspector John B⁴ indicated in email correspondence to Staff Sergeant Mike Ingles, SRR, that there were no Code of Conduct files since the findings were that the RCMP Members who had responded to YVR on the day that Mr. Dziekanski died had acted in accordance with the RCMP's training. The email further stated that the perjury charges originated in the Attorney General's office following the

RCMP Members' testimony at the Inquiry and that there was no Code of Conduct investigation.

103. The RCMP has not corrected the misinformation it disclosed on the public record with respect to its statements that characterized the Plaintiff's conduct in a negative manner in responding to the call for police assistance at YVR.

104. The RCMP's acceptance and advancement of its public stance, as outlined above, occurred to the exclusion of contrary reviews conducted by the Ontario Provincial Police, IHIT, Independent Officer of the Legislature Report, Crown Counsel, and Len Doust., independent legal counsel.

105. As set out above, a number of agencies and independent bodies assessed the circumstances leading to Mr. Dziekanski's death in the context of RCMP Policy and procedure and in consideration of the *Criminal Code*; however, none of these agencies were able to reach a finding of criminal liability or a breach of internal policy with regard to the conduct of the Plaintiff and the three other RCMP Members during and following their response to YVR on the day in question.

RCMP Training

106. On or about 27 November 2010, email correspondence between the Province of British Columbia and Mr. Gary Bass, the RCMP Commanding Officer, titled "1004s for YVR", includes the Commanding Officer's acknowledgment that the RCMP's internal policy was inadequate and that there was a shared responsibility at every level within the RCMP, as well as within the Government for the Province of British Columbia.

107. The RCMP has a legal duty and responsibility to provide adequate training to RCMP Members with respect to use of force, including the use of the Taser.

108. The RCMP is accountable and responsible for the adequacy of the training it provides to RCMP Members with respect use of force, including use of the Taser.

Access to Information

109. The Plaintiff has been engaged in protracted efforts to obtain disclosure from the RCMP, through the Access to Information Privacy application (ATIP) the events at YVR leading to Mr. Dziekanski's death, including the public inquiry into Mr. Dziekanski's death.

110. The RCMP has consistently failed and refused to disclose all of the relevant documents sought by the Plaintiff.

111. On 22 June 2016, the RCMP released the independent legal counsel's review of the members' testimony from 20 April 2010. Prior to its release, the RCMP claimed privilege to prevent disclosure of the document for a three-year period, despite the presence of documents that indicate privilege was waived by the RCMP in 2011.

112. The Office of the Information Commissioner is conducting an investigation regarding an internal report, prepared by Supt. Wade Blizard, which has yet to be disclosed to the Plaintiff, despite a request made in compliance with the prescribed process.

RCMP Member and Employee Negligence

113. At all material times, Senior RCMP Officers, RCMP Members, Crown employees and agents owed a duty of care to the Plaintiff to ensure that he could work in a safe and secure manner and that his professional conduct would be accurately and factually depicted in the public record and not subject to distorted, false, self-serving, inaccurate and unauthorized disclosure.

114. Section 37 of the *RCMP Act* provides that the RCMP Member's responsibilities include:

- a. to respect the rights of all persons;
- b. to maintain the integrity of the law, law enforcement and the administration of justice;
- c. to perform the RCMP member's duties promptly, impartially and diligently, in accordance with the law and without abusing the RCMP member's authority;
- d. to avoid any actual, apparent or potential conflict of interests;
- e. to ensure that any improper or unlawful conduct of any RCMP member is not concealed or permitted to continue;
- f. to be incorruptible, never accepting or seeking special privilege in the performance of the RCMP member's duties or otherwise placing the member under any obligation that may prejudice the proper performance of the member's duties;
- g. to act at all times in a courteous, respectful and honourable manner; and
- h. to maintain the honour of the Force and its principles and purposes.

115. The Defendants' breached the aforementioned duties and obligations by:

- a. engaging in a practice that deprived and comprised the Plaintiff of his dignity and self-respect;
- b. failing or neglecting to adhere to the requisite legislation, policies, procedures, Code of Conduct and guidelines with regards to RCMP members' access to health care, and the corresponding obligations regarding the use and disclosure of confidential medical records;
- c. failing to adequately investigate allegations of the public disclosure of false or misleading information in a thorough, timely and impartial manner;
- d. failing to comply with s. 37 of the *RCMP Act*;

- e. failing to hold accountable and responsible those found to be in breach of the legislation, policies, procedures, Code of Conduct and guidelines;
- f. failing to adequately supervise RCMP members, RCMP officers, RCMP managers and employees; and
- g. allowing injury to the Plaintiff, his professional standing and reputation, while also allowing the Plaintiff to be publically maligned despite internal findings that confirmed that he acted in accordance with the training he received from the RCMP.

116. The Defendants' conduct is reprehensible, calculated and exacted to cause harm to the Plaintiff. As a result of the Defendants' extreme conduct, the Plaintiff has suffered pecuniary loss, mental and physical injury.

117. The Defendants knew or ought to have known that their conduct would offend and threaten the integrity and security of a reasonable person. Additionally, the Defendants knew or ought to have known their conduct would:

- a. intimidate;
- b. humiliate;
- c. embarrass;
- d. offend; and
- e. threaten;

a similarly situated person in the workplace.

118. In the alternative, the Defendants knew or ought to have known that the Plaintiff was particularly susceptible to injury as a result of the Defendants' egregious conduct.

Injury and Damage

119. As a result of the Defendants' breach of contract and their breach of the duty of care that the Defendants owed to the Plaintiff, he has sustained significant and long-term injury and loss including:

- a. post-traumatic stress disorder;
- b. depression;
- c. anxiety;
- d. strained interpersonal relationships;
- e. diminished coping skills;
- f. emotional distress;
- g. insomnia;
- h. diminished self-worth;
- i. nervous shock;
- j. loss of enjoyment of life;
- k. loss of career advancement opportunities; and

I. loss of privacy. The Defendants' conduct aggravated or exacerbated the Plaintiff's earlier injuries such that they are intrinsically intertwined and difficult to separate.

120. The Plaintiff has sustained damages, loss and expenses for medical and psychological care and treatment. The Plaintiff continues to undergo medical and psychological treatment and relatedly, continues to incur loss and expense.

Part 2: RELIEF SOUGHT

1. General damages;
2. Special damages;
3. Past loss of income;
4. Future loss of income;
5. Diminished loss of earning capacity;
6. Loss of future pension benefits;
7. Aggravated and /or punitive damages;
8. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79 to the date of the Judgment or date of payment whichever is sooner;
9. Costs; and
10. Such further relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Standard of Care

1. The requisite standard of care owed by the Defendants to the Plaintiff is informed by the *Crown Liability and Proceedings Act* RSC 1985 c C-50; *Crown Proceeding Act* RSBC 1996, c 89, the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, the corresponding Code of Conduct established pursuant to s.38 of the *RCMP Act*; Part II of the *Canada Labour Code*, RSC 1985, c L-2; Canada Occupational Health & Safety Regulations; the *Libel and Slander Act*, RSBC 1996, c 263; and the *Police Act*, RSBC 1996, c 367.

2. Accordingly, the Plaintiff pleads and relies upon the following statutes and regulations: *Crown Liability and Proceedings Act* RSC 1985 c C-50; *Crown Proceeding Act* RSBC 1996, c 89, the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, the corresponding Code of Conduct established pursuant to s.38 of the *RCMP Act*; and Part II of the *Canada Labour Code*, RSC 1985, c L-2; Canada Occupational Health & Safety Regulations; the *Libel and Slander Act*, RSBC 1996, c 263; and the *Police Act*, RSBC 1996, c 367.

Government Liability for Negligence of RCMP Members

1. The Crown is vicariously liable for the torts committed by RCMP Members and Employees in the course of their duties. The Plaintiff pleads and relies on the *Crown Liability and Proceedings Act*, ss. 3 and 36.
2. The Minister is jointly and severally liable for torts committed by RCMP Members in the course of their duties in the Province of British Columbia. The Plaintiff pleads and relies on the *Police Act* ss. 11 and 21.

Misfeasance in a Public Office

3. Misfeasance in a public office is established by the presence of the following elements:
 - a. deliberate unlawful conduct in the exercise of public function; and
 - b. awareness that the unlawful conduct is likely to injure the plaintiff.

*Odhavji Estate v Woodhouse*⁵, 2003 SCC 69.

Breach of Statute

4. Proof of statutory breach causing damages may be evidence of negligence and may provide a specific standard of reasonable conduct.

Canada v Saskatchewan Wheat Pool (1983), 143 DLR (3d) 9, [1983] 1 SCR 205.

Breach of Contract

5. The RCMP entered into a contract of employment with the plaintiff pursuant to the *RCMP Act* and Regulations. It is an express term of the employment contract that the RCMP would provide the plaintiff with a work environment that complied with the applicable legislation, policies, procedures, Code of Conduct, guidelines and the common law. The RCMP breached the contractual terms by:

- a. failing to adequately train, supervise, and provide appropriate equipment to its employees, agents or servants; and
- b. failing to have and implement adequate legislation, policies, procedures, Code of Conduct and guidelines to ensure that the employee's rights were upheld.

Defamation

6. It must be established that:
 - a. the material was defamatory;
 - b. the material referred to the plaintiff; and
 - c. the material was published.

Plaintiff's address for service:

Labour Rights Law Office
Suite #211 Lincoln Centre
3030 Lincoln Avenue
Coquitlam, BC V3B 6B4

Fax number address for service: 1-877-700-8879
E-mail address for service: service@labourrightslaw.com
Place of trial: Vancouver, BC
The address of the registry is: 800 Smithe Street,
Vancouver, BC V6Z 2E1

Date:



Sebastien Anderson
Labour Rights Law Office, #211, 3030-
Lincoln Ave., Coquitlam, BC V3B 6B4; Tel:
604-475-0041, Ext. #101
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Sebastien Anderson, Barrister & Solicitor
Counsel for the Plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.