

File No.

Court Registry: Kelowna

Court File No. **KEL-S-S-129055**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**



BETWEEN:

FERNANDO VERDE

PLAINTIFF

AND:

THE ATTORNEY GENERAL OF CANADA,  
THE PROVINCIAL MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL, Cst  
DAVIDSON and Cst REGINALD SAHAY

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

**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**

**The Parties**

1. The Defendant, the Minister of Public Safety and Solicitor General in the Province of British Columbia ("the Minister"), has an office at 1001 Douglas St in the city of Victoria in the Province of British Columbia and is responsible for the actions of the Royal Canadian Mountain Police, Cst Davidson ("Davidson") and Cst Reginald Sahay ("Sahay").
2. Davidson and Sahay were carrying out the powers and duties as members of the provincial police force as defined in the Police Act, R.S.C. 1996, c. 367 and amendments to it.

## **The Plaintiff**

3. The Plaintiff is a resident of Kelowna.

## **CAUSES OF ACTION**

### **First Cause of Action: Aggravated Assault**

1. On August 1, 2020, the Plaintiff was walking through Rutland when he saw his friend's e-bike that was previously stolen. The Plaintiff saw an individual who is known to be a Bike thief in the Kelowna area. The individual is known as Bike Mike. Bike Mike had left the stolen e-bike outside of a gas station. The Plaintiff took the e-bike and rode away on instruction from the legal owner of the e-bike. The Plaintiff took the e-bike and rode away from the gas station.
2. Upon leaving the gas station and unknown to the Plaintiff, the Police were in the parking lot at the time that the Plaintiff was riding away from the gas station. Unbeknownst to the Plaintiff, the Police began to follow him.
3. The Plaintiff rode onto the bike trail of Hardie road, where he came in contact with an individual, who the Plaintiff now knows to be Sahay, along with his RCMP canine ("the Dog"). Upon seeing the Plaintiff, Sahay instructed the Dog to attack the Plaintiff. As a result of the altercation with the Dog, the Plaintiff fell off the e-bike and landed on the ground. Sahay instructed the Dog to continue to attack the Plaintiff. The Dog mauled the Plaintiff while he was on the ground. While the Dog was mauling the Plaintiff, Sahay was punching and kicking the Plaintiff in his head and ribs at the same time.
4. While the Dog was biting the Plaintiff and while Sahay was assaulting the Plaintiff, other Police officers arrived on scene including Davidson. As a result of the vicious attack by the Dog and Sahay, the Plaintiff was bleeding profusely and was badly in need of medical attention.
5. Despite the obvious injuries of the Plaintiff and despite the fact that the Plaintiff was bleeding profusely, Sahay, Davidson and the other officers did not call an ambulance immediately. The RCMP officers eventually called an ambulance to attend to the Plaintiff.

6. Davidson was complicit in the assault by the Dog and Sahay. Davidson stood by while the Dog and Sahay assaulted the Plaintiff. Davidson took no steps to stop the attack by the Dog and Sahay. Davidson took no steps to assist the Plaintiff despite the obvious signs that he was in need of urgent medical attention. Davidson was indifferent to the Plaintiff's suffering.
7. The Plaintiff Arrived at the Kelowna General Hospital ("KGH") with significant hypotension and bleeding from multiple dog bites. The Plaintiff's injuries were so severe that he lost consciousness and had to be resuscitated at KGH and had emergency surgery to repair his left superficial femoral artery. The Plaintiff was kept in the KGH for intravenous antibiotic therapy and aggressive wound care. The Plaintiff lost a significant amount of blood. The Plaintiff also had palpable pedal pulses.
8. The Plaintiff was never charged with any criminal offences.
9. As a direct, foreseeable, and proximate result of Sahay and Davidson's reckless and unlawful actions, the Plaintiff has suffered physical and emotional distress, humiliation, shame, and embarrassment, psychological and emotional trauma all to the Plaintiff's damage. Sahay and Davidson committed the acts herein, which caused injury to the Plaintiff, from a reckless, malicious, and unlawful disregard of the rights and safety of the Plaintiff and their obligation to the Plaintiff.

### **Second Cause of Action: Breach of Section 9 Charter Rights**

10. Sahay did not ask any questions of the Plaintiff before instructing the Dog to attack him. The RCMP officers detained the Plaintiff without advising him of the reasons for his detention. The RCMP officers knew that the Plaintiff was operating under the belief that his freedom was restricted and that he was under detention. The RCMP officers knew that given the Plaintiff's physical state and intimidating surroundings, being surrounded by five or six RCMP officers and a Dog that the Plaintiff at all times believed he was detained. The RCMP officers willfully and maliciously refused to provide the Plaintiff with his s. 9 Charter rights.

11. As a direct, foreseeable and proximate result of Sahay and Davidson's unlawful actions, the Plaintiff suffered physical and emotional distress, humiliation, shame, and embarrassment, psychological and emotional trauma all to the Plaintiff's damage. Sahay and Davidson committed the acts herein, which caused injury to the Plaintiff, from a reckless, malicious, and unlawful disregard of the rights and safety of the Plaintiff and their obligation to the Plaintiff.

### **Third Cause of Action: Breach of Section 10(a) and 10(b) Charter Rights**

12. Following the Plaintiff's detention, Sahay and Davidson were aware that the Plaintiff was entitled to be informed promptly of the reasons thereof, to retain and instruct counsel without delay, and to be informed of that right. The Plaintiff was never provided with his s. 10(a) and 10(b) Charter rights. Sahay and Davidson acted in bad faith and malice, willfully disregarding the Plaintiff's Charter rights. Sahay and Davidson are experienced officers and are aware of their obligation regarding the *Canadian Charter of Rights and Freedoms*.

13. As a direct, foreseeable and proximate result of Sahay and Davidson's unlawful actions, the Plaintiff suffered physical and emotional distress, humiliation, shame, and embarrassment, psychological and emotional trauma all to the Plaintiff's damage. Sahay and Davidson committed the acts herein, which caused injury to the Plaintiff, from a reckless, malicious, and unlawful disregard of the rights and safety of the Plaintiff and their obligation to the Plaintiff.

### **Fourth Cause of Action: Intentional Infliction of Mental Suffering**

14. Sahay's actions were deliberate, flagrant, and outrageous as he instructed the Dog to attack and maul the Plaintiff, while at the same time punching and kicking the Plaintiff's head and ribs. The actions of Sahay caused the Plaintiff severe injuries to his left superficial femoral artery and significant blood loss.

15. Sahay caused the Plaintiff to suffer visible and provable illness.

16. Sahay's actions were intentional and calculated as he intentionally instructed the Dog to cause physical harm to the Plaintiff while punching and kicking the Plaintiff to cause more physical harm.
17. Davidson's actions were intentional and calculated as she intentionally made no attempts to stop the Dog or Sahay from continuing their assault on the Plaintiff.

### **RCMP Member and Employee Negligence**

18. Cst. Davidson was a passive spectator as she stood by and watched as her colleague and the Dog viciously attacked the Plaintiff.
19. At all material Cst. Davidson along with Sahay are Members of the Kelowna RCMP and Crown employees who owed a duty of care to the Plaintiff to ensure that the Plaintiff received medical assistance and that their conduct would not cause the Plaintiff to suffer any psychological or physical harm.
20. The RCMP are aware that Sahay has a habit of using excessive force against members of the public.
21. Section 37 of the *RCMP Act* makes it incumbent on every Member to, among other things:
  - i. Respect the right of all persons;
  - ii. To maintain the integrity of the law, law enforcement and the administration of justice;
  - iii. To perform the Member's duties promptly, impartially and diligently, in accordance with the law and without abusing the Member's authority;
  - iv. To ensure that improper or unlawful conduct of any member is not concealed or permitted to continue;
  - v. To act at all time in a courteous, respectful and honourable manner; and
  - vi. To maintain the honour of the RCMP and its principles and purposes.

22. The *Code of Conduct* established by regulation under s.38 of the *RCMP Act* requires Members and Civilian Members to, among other things, respect the rights of every person. The Plaintiff pleads and relies upon the *RCMP Regulations*, ss. 38 to 58.7.

a. Sahay and Davidson breached the duties above by, among other things:

- i. Assaulting the Plaintiff and;
- ii. Failing to adhere to s. 37 of the *RCMP Act*.

23. Sahay's conduct directed towards the Plaintiff was abusive and repetitive in the extreme. The Plaintiff suffered mental and physical injury. Sahay, Davidson, and the Kelowna RCMP knew or ought to have known that their conduct was of a kind reasonably capable of damaging the Plaintiff. Sahay particularly knew or ought to have known that his behaviour would:

- iii. harm;
- iv. offend;
- v. demean;
- vi. belittle;
- vii. humiliate;
- viii. embarrass;
- ix. petrify;
- x. terrify; and
- xi. intimidate.

### **Punitive Damages**

24. The actions of the Kelowna RCMP were reckless, arrogant, high-handed, abusive, and showed a callous disregard for the Plaintiff's rights. Sahay, Davidson, and the RCMP have engaged in conduct that is reprehensible and deserves punishment. The Plaintiff, therefore, seeks punitive and exemplary damages against the Kelowna RCMP.

## **Part 2: RELIEF SOUGHT**

The Plaintiff claims damages from the Kelowna RCMP as follows:

- i. general damages;
- ii. aggravated and punitive damages;
- iii. costs, including special costs and applicable taxes on those costs;
- iv. damages pursuant to the *Canadian Charter of Rights and Freedoms*;
- v. pre- and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79, and amendments thereto; and
- vi. such further and other relief as to this Honourable Court may seem just.

### **Standard of Care**

23. The standard of care owed by the Kelowna RCMP to the Plaintiff is informed by, among other things, the *RCMP Act* and the *Code of Conduct* established by regulation under s. 38 of the *RCMP Act*.

### **Government Liability for Negligence of RCMP Members**

24. The Crown is vicariously liable for the torts committed by members, Civilian members, and Public Service Employees in the course of their duties. The Plaintiff pleads and relies upon the *Crown Liability and Proceedings Act*, ss. 3 and 36.

25. The Minister is jointly and severally liable for torts committed by Members in the course of their duties in British Columbia. The Plaintiff pleads and relies upon the *Police Act*, ss. 11 and 21.

Plaintiff's address for service: 618 Main Street, Penticton, B.C. V2A 5C8

Fax number address for service: 778-476-6225

Place of Trial: Kelowna

The address of the registry is 1355 Water Street, Kelowna, B.C



Date: October 15, 2020



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Signature of Michael Patterson  
Lawyer for 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.