

CANADA / JUDGMENT

M.P.W. v. Victoria (City)

2024 BCCA 19

COURT

British Columbia Court of Appeal

DECIDED

19 January 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCCA 19 M.P.W. v. Victoria (City)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

M.P.W. v. Victoria (City),

2024 BCCA 19

Date: 20240119

Docket: CA46915

Between:

M.P.W.

Appellant

(Plaintiff)

And

City of Victoria

Respondent

(Defendant)

Corrected Judgment: The cover page of this judgment was corrected on March 8, 2024.

Before:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Groberman

The Honourable Madam Justice Stromberg-Stein

On appeal from: An order of the Supreme Court of British Columbia, dated
June 9, 2020 (M.P.W. v. City of Victoria, 2020 BCSC 858, Victoria Docket S124134).

The Appellant, on his own behalf:

M.P.W.

Counsel for the Respondent:

D.G. Butcher, K.C.

C. Fleck

Order that Appeal Proceed Without a Hearing:

Victoria, British Columbia

November 9, 2023

Place and Date of Judgment:

Vancouver, British Columbia

January 19, 2024

Written Reasons by:

The Honourable Mr. Justice Groberman

Concurred in by:

The Honourable Madam Justice Newbury

The Honourable Madam Justice Stromberg-Stein

Summary:

The appellant was arrested on suspicion of sexual interference in respect of his seven-year-old daughter after she made certain disclosures to the police. The Crown did not approve charges, and there was no court appearance. The appellant sued the City of Victoria, alleging wrongful arrest and negligent investigation. At trial, the judge found that the police had proper grounds for the arrest and found no basis for finding that the investigation had not been reasonable. She dismissed the claim. On appeal held: Appeal dismissed. The appellant does not challenge the judge's findings, but argues that the trial was not procedurally fair. In particular, he contends that the judge failed to understand and accommodate his cognitive impairments, "stifled [his] voice" by refusing to listen to him and refused to give him an opportunity to present all of his evidence. None of these allegations is supported by the evidence. He also contends that the judge erred in making credibility findings against him without considering his cognitive challenges. Again the allegation lacks an evidentiary foundation; further, the credibility findings did not figure in any important way in the determination that the appellant had not established liability.

Reasons for Judgment of the Honourable Mr. Justice Groberman:

- [1] Mr. W. was arrested by the Victoria police on November 30, 2010 on suspicion that he committed the offence of sexual interference against his daughter, who was, at the time, seven years old. He was detained for a few hours and released on a promise to appear. The Crown declined to approve charges, and there was no court appearance. Mr. W. sued the City of Victoria and the police officers involved in the investigation and arrest. After a lengthy delay and several amendments to the pleadings, a trial proceeded in 2019. By that time, the only claims that remained were for wrongful arrest and negligent investigation, and the City was the sole defendant. The trial judge dismissed the claims, and Mr. W. appeals.
- [2] In doing so, Mr. W. does not directly challenge the judge's findings. Rather, he contends that the trial was unfair because he was "pushed beyond his cognitive limits" and was denied the opportunity to effectively present his case. He contends that the trial judge did not adequately accommodate his disabilities in conducting the trial.
- [3] I have concluded that the appeal must be dismissed. While Mr. W. suffered from certain health problems during the trial, his allegations that the judge failed to grant him appropriate accommodations are without foundation. The judge took steps throughout the trial to ensure that Mr. W. had a full opportunity to present his case and it appears that he, in fact, did so. Further, although Mr. W. occasionally indicated to the judge that he was feeling "foggy", he requested that proceedings be adjourned on only a few occasions. With one exception (which I will discuss), the judge accommodated each request to adjourn.
- [4] Unfortunately for Mr. W., his case was a very weak one, and his own lack of preparation did not assist in its presentation. Mr. W.'s claims failed because there was no evidence capable of establishing either negligent investigation or wrongful arrest. While Mr. W.'s health problems resulted in the trial process being more drawn out than it would otherwise have been, they did not result in an unfair trial process or any miscarriage of justice.

History of the Claim

- [5] Given the nature of Mr. W.'s assertions on this appeal, it is necessary to discuss how his claim was handled in the trial court in some detail. As Mr. W. has also expressed dissatisfaction with the appeal process, I will also outline how the appeal progressed.
- [6] The claim arose out of events that occurred in November 2010. On November 23 and 25, the appellant's wife, from whom he was separated, called the Ministry of Children and Family Development to discuss statements she said were made to her by the couple's seven-year-old daughter. The child had complained about inappropriate behaviour on the part of the appellant when she stayed with him. Of particular concern was an allegation of inappropriate sexual touching, which the appellant's wife communicated to a Ministry representative during the November 25 call. The Ministry representative advised the appellant's wife that she should contact the Victoria police department. She did so the same

day.

- [7] On November 26, the police arranged for the appellant's wife to bring the child to the police station for an interview. Because the child was afraid of the police, the wife was allowed to sit in on the interview but instructed not to take an active role. While she followed that instruction for much of the interview, she did, at times, interject to encourage the child to continue providing information. Some of the interjections were in Russian, a language that was understood by both the wife and the child, but not by the police officers. The entirety of the interview was audio recorded, and a video recording was made of most of it.
- [8] The child's most serious allegation was that the appellant asked her to "scratch" his penis at night. She said that she complied with the instruction and scratched his penis for a considerable length of time. Late in the interview, the child stated that she did not actually scratch the appellant's penis, but an area "close by" it. It is apparent that the area described remained in the genital region.
- [9] The child also referred to the appellant touching her in a sexual manner overtop of her clothing when he believed she was asleep. She gave few details, and the manner in which she described the touching was difficult to understand.
- [10] At the conclusion of the interview, the police satisfied themselves that the daughter would not be in contact with the appellant for a few days, and they took some time to decide how to proceed. On November 30, 2010, they decided that they should arrest the appellant on suspicion of sexual interference. In doing so, they considered an arrest was necessary because they had to have some means of ensuring that the appellant would not be in contact with his daughter pending the conclusion of proceedings.
- [11] They attended at the appellant's residence to arrest him. He was handcuffed, placed in a police vehicle, and taken to the station. There, he was interviewed, and spent a brief period in a cell. He was in police custody for a total of about 4 hours. During his interview, he denied the offences, but refused to answer any substantive questions. He was asked several times whether he could think of any reason why the child would say what she said, but he refused to answer, indicating that his lawyer had advised him not to say anything.
- [12] The appellant states that the police were discourteous during the arrest. He claims that they treated him with derision because of his obesity, and that they seized and discarded a note that he handed to a resident caretaker, which he says was a request that the caretaker contact someone to let them know of his arrest. The police denied these allegations, saying that they treated the appellant respectfully, and that they seized and destroyed the note because they understood that it was an attempt to communicate with the complainant.
- [13] The appellant was released on a promise to appear that included an agreement by him not to contact his daughter pending his court appearance.

- [14] The police conducted further interviews with the complainant on December 1 and 7, 2010, and forwarded their report to Crown counsel on December 14, 2010, recommending a charge of sexual interference. On January 7, 2011, the Crown declined to approve charges, and there was no appearance in court.
- [15] The Ministry of Children and Family Development became involved and entered into discussions and eventually into arrangements with the appellant. Under those arrangements, he initially had supervised access. Ultimately, he gained unrestricted access. At the time of the trial, it appears that he was the primary caregiver for the child, who was then 16 years old.
- [16] The appellant commenced his action against the investigating and arresting police officers and against the City of Victoria a full two years after the arrest. The notice of civil claim was a confusing document, alleging various wrongdoings on the part of the police, but failing to clearly set out the elements of particular torts.
- [17] The appellant did not pursue the action with any vigour, taking virtually no steps for almost three years. In October 2015, the defendants filed an application to have the claimed dismissed for want of prosecution. When it came on for hearing in 2016, the court declined to dismiss the action, but directed the appellant to take specific steps to move the case forward, including setting the matter down for trial. Eventually, the trial was set for September 2017. In the months leading up to the trial there were discussions between the appellant and counsel for the defendants concerning the adequacy of the pleadings. Although Mr. W. agreed to file amended pleadings, he did not do so. The defendants filed an application, to be heard at the commencement of the scheduled trial, to strike the notice of civil claim on the basis that it failed to disclose a cause of action.
- [18] When the application came on for hearing, the judge struck the existing notice of civil claim. He ruled that no claim could be brought for assault or abuse of process, or for defamation against the arresting officer. He granted leave to Mr. W. to file an amended notice of civil claim to allege that the police conducted a negligent investigation and made a wrongful arrest. He also granted him leave to make a claim in defamation against the investigating officer.
- [19] Mr. W. filed an amended notice of civil claim in November 2017. The defendants applied to have it struck. There were delays in having the motion heard, partly due to Mr. W. being injured in a motor vehicle accident. After several adjournments, it came on for hearing in July and August 2019. During the hearing, Mr. W. sought a further opportunity to amend the pleadings and provided a new draft. In reasons indexed as 2019 BCSC 1448, the chambers judge allowed that draft, with some excisions, to be filed. The new notice of civil claim, which alleged only negligent investigation and false arrest, was filed on August 27, 2019. The defendants filed their response on September 6, 2019. The trial commenced on September 9, 2019. It was scheduled for ten days, but the appellant had not closed his case at the end of that period and a further week was scheduled for October. The appellant eventually closed

his case on the afternoon of the fifteenth day of trial, after which the defence presented its evidence briefly.

- [20] The parties agreed to make their submissions in writing. At Mr. W.'s request, he was given more than two months to prepare his written submissions, which he filed on January 2, 2020.
- [21] The judge released her comprehensive reasons on June 9, 2020, rejecting the plaintiff's claims. In respect of the claim for negligent investigation, the judge was troubled by the plaintiff's failure to present expert evidence establishing the standards expected for an investigation of a sexual offence against a child. While she recognized that, in the absence of expert evidence, she could not fully analyze the matter, she indicated that, on the face of it, the investigation appeared to have been reasonably conducted.
- [22] She also found that the police had reasonable and probable grounds to make the arrest and were justified in doing so. In making that finding, she considered that it was reasonable for the police to believe that the arrest was necessary for the safety of the child.
- [23] As I have indicated, the appellant does not directly challenge the judge's findings. Rather, he contends that the trial was unfair because the trial judge did not afford him sufficient accommodations during the trial.

The Course of the Appeal

- [24] The appeal has been subject to many delays. The notice of appeal was filed on July 8, 2020, within time. The appeal record and transcripts were not ordered in a timely manner; the appellant wished to have the matter assessed by a lawyer who might be willing to act pro bono. On November 4, 2020, an initial extension of time was granted, to November 30 for the appeal record and to December 31 for transcripts. Shortly thereafter, in the course of an unsuccessful application for no-fee status, the appellant advised that the pro bono lawyer declined to take on the case because, in the lawyer's view, the appeal had no merit (*M.P.W. v. Victoria (City)*, 2020 BCCA 351).
- [25] The appellant filed an appeal record on November 30, 2020, though it was deficient. At the same time, he filed a notice of constitutional question, alleging that the conduct of the trial violated section 15 of the Charter and that the award of costs was contrary to section 7. A judge of this Court described the notice as "convoluted" and noted that it raised issues that had not been raised at trial (see *M.P.W. v. Victoria (City)*, 2023 BCCA 14).
- [26] On December 23, 2020, the appellant was granted an extension of time to file transcripts and an appeal book to March 25, 2021, and an extension of time to file his factum to May 15, 2021.

- [27] The appellant discussed further extensions with counsel for the respondents on several occasions, and counsel agreed to various extensions, though no court orders were obtained. On May 7, 2021, the appellant filed the transcripts, with consent. The Registrar placed the appeal on the inactive appeal list on September 15, 2021, and the appellant was given written notice that unless he took steps to reactivate the appeal, it would be dismissed as abandoned on March 15, 2022.
- [28] The appellant had his factum in a form that he considered ready to file on September 17, 2021, and the respondents agreed to consent to a filing on that date, but the appellant was unable to file his factum because the appeal was on the inactive list. It appears that, in any event, the draft factum did not comply with the Court of Appeal Rules, B.C. Reg. 120/2022 [Rules].
- [29] The appellant took no steps in the appeal until March 4, 2022, when he filed a motion to reactivate it. By that time, the respondents were not prepared to countenance the delay, and opposed the application. In reasons indexed as 2022 BCCA 113, the appellant was granted an order reinstating the appeal with conditions. He was granted until April 15, 2022 to file a factum complying with the Rules. The appellant actually filed his factum and appeal book (which did not comply with the Rules) on April 19, 2022 and served them several days later.
- [30] An application by the respondents to settle the appeal book was filed on May 30, 2022. The Registrar held a hearing and struck the appellant's appeal book. He allowed him six weeks to file a proper appeal book. He also directed that the appellant seek leave to have the notice of constitutional question considered. The time for filing the respondent's factum was postponed to a date to be determined by a case management judge.
- [31] The appellant failed to file a new appeal book, and on September 12, 2022, the Registrar directed the matter to be placed before a case management judge. The appeal was again transferred to the inactive list on September 15, 2022.
- [32] A case management conference was held on October 31, 2022. The case management judge ordered the appellant to prepare and file his appeal book and to file an application to remove the appeal from the inactive list.
- [33] The appellant did not comply with the judge's clear directions with respect to the appeal book; instead, he included documents that were not before the trial judge, and failed to include documents that were placed before the trial judge that were mentioned in his factum.
- [34] The appellant filed his application to reactivate the appeal on December 12, 2022, and it was heard on December 28, 2022. He contended that he did not require an appeal book, because he was not challenging the judge's legal or factual analysis; rather, he was arguing that the trial judge had failed to accommodate his cognitive deficits. He said his appeal would depend only on the transcripts and on "fresh evidence" that he intended to file.

- [35] In reasons indexed as 2023 BCCA 14, the case management judge reactivated the appeal, but only as against the City of Victoria. She held that the prejudice caused by the delay weighed against reinstating the appeal against the individual respondents. She directed that the appellant was not required to file an appeal book. In order to ensure that the appeal was not further delayed, she placed a deadline on the application the appellant indicated that he would be making to have counsel appointed to argue his case. She required that if the application was going to be made, it had to be filed by February 17, 2023. She indicated that the respondent's factum would not be required until two other issues were resolved -- the appellant's intended application to adduce fresh evidence and his application for leave to raise constitutional questions.
- [36] The appellant filed his application for appointment of counsel on February 16, 2023, and it was heard on February 27, and dismissed in oral reasons indexed as 2023 BCCA 111. The chambers judge held that there was no authority to order the appointment of publicly-funded counsel in a civil case. He further observed that, in any event, the appellant had not demonstrated a need for the appointment of counsel.
- [37] Following the decision on the application for appointment of counsel, a case management judge gave directions for the scheduling of the applications for leave to argue constitutional questions and for leave to adduce new evidence. Despite the Court's efforts to get the applications heard, the matter again reached the point where it was, pursuant to Rule 50(4) (b) of the Rules, placed on the inactive list on July 24, 2023. After correspondence from the appellant, and with the consent of the remaining respondent, the matter was restored to the active list by the case management judge on July 27.
- [38] On that same date, the judge heard the appellant's applications for leave to argue constitutional questions and for leave to adduce new evidence. In reasons indexed as 2023 BCCA 341, the judge noted that the evidence the appellant wished to have admitted on appeal consisted of medical documents that had been marked as exhibits for identification at trial. The chambers judge recognized that this was not an application to adduce fresh evidence, but rather an application to adduce material that was before the trial judge. He ruled as follows:
- [36] Evidence not admitted by the trial judge is not, in my view, the subject of a fresh evidence application but, rather, goes to the merits of the appeal. This would be consistent with what occurred in *Pearlman* [*Pearlman v. Atlantic Trading Company Ltd.*, 2008 BCCA 477]. The appellant was a plaintiff in a civil jury trial where the jury delivered its verdict against him, and the trial judge dismissed the action. During the trial, the appellant sought to introduce some reports which the judge ruled inadmissible. On his application seeking leave to appeal, the appellant also sought to adduce these reports as fresh evidence. Justice Chiasson, after concluding that leave was not required, stated:

- [6] Mr. Pearlman seeks to introduce a number of reports, some of which were rejected by the trial judge. As to those, the issue is not the introduction of fresh evidence, but an argument seeking to overturn the judge's evidentiary rulings. Insofar as Mr. Pearlman seeks to have this Court consider reports not previously tendered as evidence, his application would appear to be to introduce fresh evidence.
- [37] Accordingly, the most I am prepared to do on this application is to grant the appellant leave to file a supplementary appeal book containing the Documents such that "the division have available to it all proper information that may be of assistance". It will then be in a position to consider the appellant's submissions with respect to the specific documents he says ought to have been admitted and why.
- [38] I also order that the appellant's Supplementary Appeal Book contain a tab for each document in question and that the index cross reference the tab to the exhibit number for identification at the trial.
- [39] In fairness to the respondent, I also order that it:
- (a) has leave to file a Supplementary Appeal Book containing those extracts from the Additional Medical Documents which it considers necessary to place before the Court at the hearing of the appeal; and
 - (b) may refer to the Documents to be contained in both the appellant and the respondent's supplementary appeal books in the respondent's factum, which is to be filed.
- [40] The appellant will have the opportunity to refer to either supplementary appeal book in his reply factum.
- [39] The judge also denied leave to raise new constitutional issues on the appeal.
- [40] The appellant did not take advantage of the judge's order allowing him to file a supplementary appeal book and did not file a reply factum.

Order that the Appeal be Decided Without an Oral Hearing

- [41] The appeal was scheduled to be heard by this panel in Victoria on November 10. On November 6, Mr. W. sent a document entitled "Letter to the Honourable Mr. Justice Abrioux" to the registry. In the letter, Mr. W. indicated that his medical condition was such that he did not wish the matter to be heard in the ordinary fashion, and that he wanted it to be dealt with through "submissions". Justice Abrioux had dealt with certain pre-hearing matters in this case, which probably explains why Mr. W. directed the letter to his attention, rather than to the Court. The indication on the document that it was for the attention of Justice Abrioux, however, resulted in the letter not being brought to the immediate attention of this panel.

- [42] On November 8, the court registry received a telephone call from a social worker at the Royal Jubilee Hospital indicating that Mr. W. had experienced "an acute health event" and that he was hospitalized and was undergoing further medical investigations. In a follow up email to a clerk of the court, the social worker added that Mr. W. was "medically unstable" and would "certainly not be discharged by Friday [the date set for the appeal]". Two hours later, the same social worker sent a further email indicating that the physician overseeing Mr. W. considered it likely that Mr. W. would be discharged before the date scheduled for the appeal. Shortly thereafter, the registry received an e-mail from Mr. W. requesting that his November 6 letter be provided to the Court. The Registrar forwarded a copy to the members of the panel.
- [43] The Associate Registrar attempted to set up a pre-hearing teleconference to be attended by Mr. W. and counsel for the respondent for the morning of November 9, but was unable to reach Mr. W., and he did not return her messages. That morning, the registry received two emails concerning Mr. W.'s condition -- one from the social worker indicating that Mr. W. was ready for discharge from the hospital and was "medically stable". The email suggested that Mr. W. could appear for his appeal. A second communication, entitled "Doctors Note", from a doctor at a medical clinic in Victoria, stated that Mr. W. was "currently admitted to hospital and his discharge date is unknown". The doctor said that he did "not anticipate [Mr. W.] would be able to attend court proceedings for a minimum of 2 weeks".
- [44] In the circumstances, the Court decided to proceed without an oral hearing. In making that decision, we were cognisant of the appellant's chronic health problems and guided by his expressed preference not to have the matter adjourned, but rather to have it dealt with on the basis of "[written] submissions". We were also satisfied that both sides had put forward their arguments comprehensively in their factums, such that an oral hearing could add little to what was already before the Court. On November 9, Newbury J.A. wrote to the Associate Registrar on behalf of the panel in the following terms:

Given our understanding that Mr [W.] is unable to attend to make argument tomorrow, we are of the view that this court should, as previously requested by him, proceed to decide the appeal on the basis of the written submissions. For this purpose the factums and other filed material are in our view sufficient. We will make this order under s. 26(1)(b) of the Court of Appeal Act.

- [45] Accordingly, we are deciding this matter on the basis of the factums and other materials that have been filed, without holding a hearing.

Evidence of Mr. W.'s Health Challenges

- [46] While Mr. W. did not file a supplementary appeal book, as contemplated, I considered it appropriate to look at the evidence that he wished to place before the Court in respect of his medical conditions. To this end, I have read and taken into account the documents annexed to the affidavit that he filed in support of his application to adduce "fresh and new evidence", sworn April 17, 2023. I have also looked at the medical documents included in his appeal

book, notwithstanding that the book itself was struck for non-conformity to the Rules. These documents, combined with the transcript, provide a fair picture of the information that was available to the trial judge at various points in the trial in respect of Mr. W.'s health and capacity to present his case.

- [47] The appellant's health concerns arose primarily from two sources: first, he was in an automobile accident approximately five months before the trial. He says that the accident left him with vestibular hypofunction at the time of trial. It is not clear to what extent the appellant continued to suffer from the effects of the accident at the time of trial. Some of the material he has filed suggests that his injuries had largely resolved by that time, but other material indicates that he continued to suffer from dizziness and limited stamina and attributed those conditions to the accident.
- [48] Mr. W.'s cardiovascular health was a greater concern. As early as 2012, he was diagnosed with hypertension and was said to be at significant risk for a cardiovascular event. The materials indicate that he has suffered numerous transient ischemic attacks, or "mini-strokes". It appears that he may have suffered such an event on the morning of October 16, 2019, a day scheduled for trial, but on which it did not proceed. The material, however, does not prove that such an event did happen during the trial period.
- [49] That said, the appellant has undoubtedly suffered from a series of mini-strokes, and the cumulative effect may be the source of his inability to concentrate for long periods, and of his tendency to feel fatigued. It may also play a role in what he refers to as his tendency to become "foggy". While the materials do not establish a particular disability, they plausibly support the idea that the appellant may have required some accommodations at trial.
- [50] It is important to note that the problems suffered by the appellant are chronic. This was not a situation where he was acutely disabled for a period of time but was expected to improve. Rather, the only way that the court could reasonably accommodate him was to ensure that he understood the procedures, allow him frequent breaks, and be patient with the slow pace of his presentation. As I will indicate, the judge handled the situation with sensitivity, and made extraordinary efforts to ensure that Mr. W. was able to fully present his case, notwithstanding that this prolonged the trial and made scheduling difficult.
- [51] At the outset of the trial, the judge provided Mr. W. with a detailed memorandum discussing court procedures and etiquette. It is a document often provided by trial judges to self-represented litigants. Throughout the trial, the judge took steps to satisfy herself that Mr. W. understood procedures and could participate fully in the trial. She allowed him, for the most part, to dictate when evidence would be presented, and when arguments would be made to address various evidentiary issues.

Accommodations Sought and Issues Arising During the Trial

[52] Mr. W. asked for accommodations on several occasions. On September 9, 2019, about an hour into the first day of the trial, he requested an adjournment so that he could go home and get a printed copy of his opening statement. Later that day, he also expressed himself to be "pretty worn out" and suggested the court take an early and extended lunch break. The judge accommodated the request. That afternoon, Mr. W. delivered his opening, and told the judge that he was "pretty well worn out". The judge dealt with some housekeeping matters, then adjourned early to accommodate the appellant.

[53] On the second day of the hearing (September 10), the appellant asked to be allowed to add to his opening statement, which the judge allowed him to do. After the opening, he began his testimony. The evidence went slowly, as Mr. W. required assistance in understanding how to introduce documents into evidence and did not appear to have an outline of the evidence he intended to give.

[54] The judge provided all necessary assistance. In the afternoon, she heard submissions with respect to the admissibility of certain videotapes taken some eight years after the appellant's arrest. At approximately 2:30 p.m., the appellant said "I regret I'm at this point that I can't even absorb anything". He requested to have proceedings adjourned to the following morning:

I'm pressed far beyond my limits and I was going to ask if I could adjourn earlier today because I'm not feeling well and I have to prepare for tomorrow.

[55] The judge acceded to the request. She dealt with some housekeeping and scheduling issues, and then adjourned for the day, with instructions that Mr. W. would complete his submissions on the videos the following morning.

[56] On the third day of the trial (September 11) the judge noted that they had not yet sat a full court day but reiterated her position that she would accommodate the appellant, saying:

[Y]ou are free to say you're not feeling well, and perhaps we need to - you know, and I'll do my best to accommodate that. So the concerns you have with your health, we're doing our best to accommodate that.

[57] Mr. W. advised that he had not had time to complete his preparation on the admissibility of the videotape evidence and asked that it be put off. The judge agreed to do so, but emphasized that she wished to give her ruling, and that he would have to complete his preparations without further delay. Mr. W. then resumed giving evidence, with the judge assisting him as necessary. He concluded his direct evidence at 2:30 p.m. The balance of the court day was taken up with housekeeping matters, and with the admissibility of evidence proposed to be adduced by Mr. W.

[58] On September 12, the fourth day of trial, the appellant indicated that he wished to give more evidence in direct examination. The trial judge allowed him to be recalled to provide further testimony. His evidence proceeded slowly, as much of it consisted of inadmissible hearsay or irrelevant material. After the morning break, the judge advised him that she expected him to conclude his evidence by the noon break. His testimony continued in the same vein for the remainder of the morning. At about 12:30 p.m., he raised an issue with respect to service of a subpoena. The following exchange occurred:

THE COURT: Okay, well, let's just finish your evidence.

[Mr. W.]: Okay.

THE COURT: There's some housekeeping at -- are you finished on your direct evidence?

[Mr. W.]: There's more, but I'm in a state of mind right now that, you know, I've already put in more than an eight-hour day, where I'm - usually after three hours, I'm pretty well finished, so -

THE COURT: Okay. So we're going to end your direct examination, so you -- now you're no longer under oath and you said there was some housekeeping matter -- matter that you -

[Mr. W.]: Okay. [He continues with a discussion of the housekeeping matter].

[59] As I understand it, there is no issue with respect to the completeness of the appellant's evidence in chief. When court resumed, the appellant reiterated his medical issues, but indicated that he was prepared to proceed with cross-examination:

THE COURT: Okay. So now are we ready to proceed?

[Mr. W.]: Yeah. I want to give an update. I - I've just received - I've got it printed off - one of my medical files. It's about 50 pages. And, for the record, I just want to say that normally it's a good day if I can do three, four hours, and where I started at 4, I'm already going on to my eleventh hour, so I'll do my best. I - I will do what I can do, so -

THE COURT: Okay. Well, let's see how far we get in the cross-examination.

[Mr. W.]: Thank you.

[60] The cross-examination proceeded, with the appellant answering questions without apparent difficulty. At one point, counsel suggested that he would have an opportunity to refresh his memory with respect to certain dates by looking at documents during the afternoon break. In response, Mr. W. said:

They're - they're there. I don't know if I'm going to make it to the break, I'm really not feeling well, but let's continue. You've been provided with those dates.

[61] He did not request to take the break early or indicate an inability to continue, nor did his answers suggest any difficulty in following the proceedings or in recalling facts. Indeed, they were not only responsive, but also detailed.

[62] After the break, Mr. W. stated that he was finding it difficult to concentrate, and that while he "would like to continue and keep things moving" he was finding it "difficult to find words and to think". Although he did not expressly request that the matter be adjourned, the judge immediately excused him from giving further evidence that day.

[63] She reminded him, however, that she had intended to give a ruling on the admissibility of videotape evidence and asked whether he had reviewed the case law that he previously indicated he needed to consider. He replied that he had not. The judge again put off her ruling but emphasized that his final opportunity to address the matter would be the following morning.

[64] There followed a discussion of some scheduling matters, but ultimately the judge agreed to revisit those matters in the morning when Mr. W. was "fresher".

[65] The following morning, the judge asked whether Mr. W. was prepared to address the cases relevant to the videotape evidence. He indicated that he was, but first wished to hand up to the judge his medical records. In doing so, he stated that the records talked about "what I was experiencing yesterday with the foggy brain and inability to concentrate after awhile". When the judge asked the purpose of the records, the appellant responded:

[Mr. W.]: . I just want the court to be aware and I don't want - I did mention yesterday, you know, by all rights if I would've followed Justice MacKenzie's recommendation that if I need a break, I should've taken a break. Had I not been so exhausted I would've gone to a clinic last night and so I just wanted, you know, the record to show that I am having some difficulties and struggles .

[66] The judge then asked respondent's counsel whether he had a position on the medical records. He responded as follows:

MR. BUTCHER: I have no position on them at all. You can imagine that I have two objectives here. One is to ensure that we finish this trial and one is to ensure that no complaint can be made at any later date or in any other place about [Mr. W.'s] ability to handle the trial and as long as [Mr. W.] is introducing these records to let him - let you know that he may have a bona fide reason to ask to stand down at some point in the process, then I am very content with that.

And inconvenient and frustrating though it is, I would rather that we do that than have him say he didn't have a fair trial somewhere later.

So, as I understand it, he's not making that assertion at this point, he's simply saying, "I may need to break because I have conditions", that he says is supported by these documents.

[67] Mr. W. responded (after the judge marked the documents for identification), as follows:

[P]art of the reason for these documents, to show I am making every effort to finish within the time length and get anything out. I will say this, that in the morning when I thought about what I said, I realized I was saying some stuff that I didn't realize I was saying.

So, I'll try and be very cognizant to the extent that if I find that I am shutting down, I will ask to stand down.

- [68] Mr. W. then concluded his observations on the case law concerning the videotape evidence, which the judge ruled was inadmissible. Mr. W. then asked whether he would have an opportunity to revisit his answers from the previous day that he considered were "not complete or possibly not correct" "or maybe misinterpreted". The judge explained that he could raise the issues in re-direct to the extent that it was appropriate, but the respondent's counsel then indicated that he would afford Mr. W. an opportunity to address any issues when cross-examination re-commenced. When cross-examination resumed, he gave Mr. W. an opportunity to "correct or clarify or expand" on the answers he had given the previous day. Mr. W. took the opportunity to raise a few issues, though they appear to have been of tangential relevance. Cross-examination continued for the rest of the morning.
- [69] In the afternoon, Mr. W.'s cross-examination was interrupted in order to allow him to call his daughter to give evidence. His daughter was attending school, and efforts were made to ensure that she missed classes as little as possible. Mr. W.'s direct examination of her took until 3:45 in the afternoon.
- [70] At the conclusion of the examination in chief the judge asked how long cross-examination would last. Counsel advised that it would be more than 15 minutes (the amount of time remaining in the normal court day). The judge made arrangements to sit late, with the hope of completing the daughter's evidence.
- [71] The appellant interrupted questioning at 4:10 p.m., noting the time and asking whether he would have time for re-direct examination. The judge responded that they would try to finish the witness's evidence so that she did not have to return.
- [72] About ten minutes later, the appellant again interrupted the questioning stating (erroneously):
- I curtailed my questioning and Mr. Butcher said he'd try to keep it to 15 [minutes] and we've already gone over 45 and as much as I hate to do this, I think we need to continue this [another day] because I don't think - we're obviously - it's 10 minutes to 4:30. We're not going to get back to me and I don't think Mr. Butcher's anywhere near where he's leading.
- [73] The judge asked Mr. W. whether he would have questions in re-examination. He replied:
- I do have some, but again I'm showing fatigue and, you know, I think we should ask the witness, but I can't see this concluding quickly.
- [74] The judge asked the witness whether she wished to continue in the hope (but with no guarantee) of concluding her evidence that day, or wished to resume after the weekend. The witness expressed a preference to continue.
- [75] Approximately ten minutes later, Mr. W. raised an "objection":

[Mr. W]: Your Honour, I'm going to object again because it's almost an hour and again I curtailed my questioning on the assurance it wouldn't be much more over 15 minutes.

THE COURT: Well, I don't know where you're getting the assurance much more than 15 minutes, but Mr. Butcher's entitled to do cross-examination to the point where he finishes -- he thinks he's asked the necessary questions on behalf of his clients. So, are you saying you're too tired to continue?

[Mr. W.]: I am too tired, but also again I can't remember the exact words, but Mr. Butcher said he would keep it short and at the break [the witness] was crying and wanting to know. So, you know, because of the discomfort I limited myself, so at least I want the right to continue mine because I shortened it on the assumption that - not to cause discomfort and that Mr. Butcher was going to try and be brief and I don't think an hour and he's not yet finished is the definition of brief.

[76] The judge decided to continue with the cross-examination, leaving open the possibility that the witness would have to re-attend for re-examination at a later date. The cross-examination concluded just before 5:00 p.m. The judge asked Mr. W. how long he required for re-examination, and he replied:

[Mr. W.]: About -well, this is what I warned about earlier today, Your Honour, when I said by the end of the day my concentration is gone and I made the court aware of this.

THE COURT: Are you asking, then, for this witness to be stood down and come back another day for your re-examination?

[Mr. W.]: I don't want to, but I don't see a choice. I'm going to -- Your Honour, I'm going to leave this at your discretion.

[77] The judge responded:

THE COURT: So, it's not about me, it's more important that it's whether you have the ability to conduct the re-examination. That's what's important.

[Mr. W.]: I think it would be prejudicial against myself.

[78] The judge did not insist on Mr. W. continuing, instead arranging for the witness to attend for re-examination after school on the following Monday.

[79] On the Monday (September 16), proceedings could not commence in the morning because weather conditions delayed the respondent's counsel's travel to Victoria. In the afternoon, Mr. W. advised that he noticed his speech was slurred in the morning, and that he had gone home and "almost blacked out." He asked to adjourn proceedings so he could go to the hospital. He also advised that he wished to listen to the digital audio recording of the proceedings from the previous Friday afternoon, as he "had no recollection of what was asked, what was answered, and wasn't really comprehending much". He had made arrangements to listen to the recording over the noon break the next day. The proceedings were adjourned to Tuesday morning to accommodate the appellant.

- [80] On Tuesday (September 17), Mr. W. reported that he was prepared to proceed. He explained that he had attended at hospital and was diagnosed with a transient ischemic attack, and had been told he may have passed a blood clot. He was not kept in hospital but was to attend at Victoria General Hospital's Stroke Rapid Assessment Unit the following afternoon. Counsel for the respondent continued to cross-examine Mr. W. without objection from Mr. W. It took up the balance of the morning.
- [81] That afternoon, Mr. W. concluded his re-examination of his daughter, which took about one-half hour. Mr. W. then wanted to deal with housekeeping matters, but the judge directed that, instead, his cross-examination continue, and that housekeeping matters be dealt with later. Mr. W. acceded to that request and expressed no concerns about it. Cross-examination continued until about 3:50 p.m., when it was adjourned to allow the housekeeping matters to be addressed.
- [82] Mr. W. agreed to an early start on September 18 to accommodate his own need to attend at Victoria General Hospital that afternoon. He also suggested that the lunch break be shortened. The day was taken up with his cross-examination. At one point, when a video was to be played, Mr. W. requested that he be allowed to have notes he had made over the lunch break. In an isolated comment, he indicated that he was "foggy and dizzy" but there is nothing else in his testimony to indicate that he was having difficulty, nor did he ask for any accommodation apart from breaking 15 minutes earlier than planned to provide him additional time to get to his 3:00 p.m. appointment. His testimony for the balance of the day was responsive, on-point and detailed.
- [83] On Thursday, September 19, the judge commenced by discussing continuation dates given the slow pace of the trial. After doing that, she asked whether there were any other housekeeping issues to be dealt with. Mr. W. handed up a note from the neurologist he had seen the previous day. He stated that he had undergone a CT scan that disclosed evidence of damage caused by "mini-strokes". Although he did not ask that the trial be adjourned, he alleged that if counsel had suffered a mini-stroke, the trial might not have continued.
- [84] The judge noted that Mr. W. had not produced medical evidence indicating that he was incapable of proceeding. She also said:

[D]uring the course of this trial I am watching carefully how you are answering questions and as far as I've been able to discern, although sometimes you do get tired, obviously, which is understandable and especially later in the afternoon, I have not seen any evidence to support that you're incapable of continuing to answer questions or pose questions. In some cases you are quite astute in how you're dealing with, for example, the transcript of [Mr. W.'s daughter] and what you say she -- the interpretation of her answers.

So, at this point I am not convinced and you would have to get a letter from your doctor saying that you cannot continue. There is - I'm not sure it's going to get any better. I mean, I think you - this is a matter that cries out for - that it be finished, for a number of reasons.

So, I think we're trying to do our best to accommodate you, [Mr. W.]. You know, and we're not going to start early tomorrow, and if, at any time, you feel that you can't continue because you simply are too confused or feeling ill I encourage you to tell me that.

[85] The appellant was cross-examined during the morning and for about 15 minutes in the afternoon. When he was called upon to commence his re-direct evidence, he raised a health issue saying "I'll go as far as I can, because at the noon break I was quite foggy". He then proceeded. His evidence did not display any lack of concentration or attention, though much of it was not properly included as re-direct evidence, and he often treated his testimony as an opportunity to make arguments. Just before 3:00 p.m., he mentioned that he was "quite foggy", and the judge took the afternoon recess.

[86] After the recess, Mr. W's "evidence" strayed increasingly into the realm of argument. After about 20 minutes, he commented that he was "fogged up" and said "I'm going to quit soon because if I keep on going, I'm going to miss stuff and do things that are prejudicial, because I'm going to default to what Justice MacKenzie [said] that when I can't - you know, if I need a break, I stop". The judge invited him to finish his evidence on the matter that he had been discussing, but it soon became clear that Mr. W's "testimony" amounted to submissions rather than evidence. The judge interjected to remind him that he was supposed to confine himself, at that point in the trial, to giving evidence. The following exchange took place:

THE COURT: Again -

[MR. W.]: I'm sorry.

THE COURT: - you're not making submissions.

[MR. W.]: Okay.

THE COURT: Maybe this is all submissions you want to make to me.

[MR. W.]: Okay, I -

THE COURT: But there's evidence that I'm looking for from you now.

[MR. W.]: Okay, Your Honour. I'm going to quit because I can't even think right now.

THE COURT: Okay. Well, why don't you -- get out of the witness box, go back to the counsel table.

[87] The judge then invited Mr. W. to take the evening to focus his thoughts so that he could conclude his re-direct evidence the next day.

[88] On the next day (Friday, September 20) a witness subpoenaed by Mr. W. gave evidence. Mr. W. made no mention of health problems, nor did he exhibit any confusion or cognitive dysfunction in his questioning. The witness was then cross-examined by counsel for the respondent. Just before the Court adjourned for the lunch break, Mr. W. addressed the judge:

Mr. W.: Your Honour, I just have one housekeeping issue, that when we're done the matter with [the current witness], I'd like to be excused. I actually was supposed to be excused all day today. I have a letter from a doctor. But I wanted to attend for [this witness], because I knew it was difficult for her to come here today.

[89] In the course of the afternoon, Mr. W. became agitated when some questions were put to the witness in cross-examination. After making an objection, he stated:

But, you know, I can't function right now, Your Honour. I don't know what to do. I thought I could make it to noon. It's almost - it's almost 3:05.

[90] The judge then made certain procedural orders and adjourned the hearing over to October 21, 2019. In doing so, she noted that Mr. W. had not concluded giving his re-direct evidence, and advised him that she would only permit him one additional hour "because it's only evidence[,] it's not argument". She indicated that she would not initially place limits on the cross-examination of the investigating and arresting officers by Mr. W., but cautioned him that the evidence would have to be completed by Wednesday of the additional week that had been arranged. Mr. W. indicated that he thought he would have eight hours to cross-examine the investigating officer, but the judge reminded him that his trial brief had indicated only four hours, and she was not prepared to allow him eight hours, which she considered excessive.

[91] On October 21, the witness who testified on September 20 was recalled and completed her evidence. After some discussions, which included the appellant providing an "update" on his medical condition, the appellant continued his re-direct evidence, which took well over the one-hour allotted and was rather unfocussed. It was, for the most part, not proper re-direct evidence. The appellant did not, however, express any concerns about "fogginess" during his evidence. Ultimately, the judge concluded the re-direct examination. Next, Mr. W. called the investigating officer as an adverse witness. He cross-examined the officer for the remainder of the afternoon.

[92] On October 22, Mr. W. interrupted his cross-examination of the officer to call another witness. At one point, the judge asked him to clarify a question, and Mr. W. stated that he was having trouble formulating the question without it being leading, because he was "getting a little foggy". Apart from that comment the appellant did not appear to have any difficulty proceeding. That afternoon, the cross-examination of the officer continued. At the conclusion of the day, the judge pressed Mr. W. for a time estimate, but he was unable to provide one other than to say that he did not have too much left, and that he was "more than halfway through this and it's going rather quickly".

[93] On October 23, Mr. W. cross-examined the officer for the entire day. Just before the noon break, the judge raised the issue of timing with him, and he requested that there be no oral argument, but that final submissions be in writing. Mr. W.'s cross-examination was slow and repetitive. Toward the end of the afternoon, the judge attempted to direct his attention to the issues he had previously expressed a desire to address, and advised him that she would be

imposing a time limit on the cross-examination at day's end. She noted that they were running out of time. Mr. W. then complained that he was having difficulty concentrating:

[Mr. W.]: I am trying to stay focused. And I - I do have this whatever you want to call it disability on concentration. And I'm getting into the zone now. I'm unable to concentrate, plus I have to go home after this and prepare for tomorrow and prepare in the morning.

And it's - it has come to the point now where I can't even remember the questions previous or the answers.

[94] The judge immediately excused the witness and entered into a discussion on scheduling issues. Mr. W. stated that he would not examine the arresting officer for very long. Mr. W. agreed to call him at 9:30 a.m. the next day. She instructed Mr. W. that he would have to complete his examination of the investigating officer after the arresting officer had completed his evidence, and that he would have until the noon break to complete his cross-examination. The judge agreed to have final argument in writing and asked that Mr. W. be provided with a copy of the audio recording of the proceedings free of charge in order to assist him.

[95] On October 24, Mr. W. called the arresting officer. He completed his cross-examination quickly, and the cross-examination by the respondent and re-examination were also done before 11:00 a.m. Mr. W.'s cross-examination of the investigating officer was then continued. At approximately 12:25 p.m., Mr. W. said that he was feeling "a little bit dizzy and drifty" and asked to take the noon break a few minutes early. The judge agreed, but told Mr. W. that she would give him only a further 45 minutes after the court resumed in the afternoon, and that he should focus on important matters. She clarified that he would also have an opportunity to do a proper re-examination.

[96] After Mr. W. had cross-examined for about 55 minutes more, the judge advised him that his time was up:

THE COURT: Okay, Mr. W., I said you had until 2:30 so it's 2:37, so we're going to end your further cross-examination.

[Mr. W.]: Can I do one more question?

THE COURT: One more question? Go ahead.

[97] Mr. W. asked several more questions before the judge terminated the cross-examination about 5 minutes later. The respondent then commenced his cross-examination of the officer. He concluded it shortly after the noon break the following day.

[98] Mr. W. then commenced a re-examination that lasted about 40 minutes, much of which was not proper re-examination. After one objection that Mr. W. was covering ground that he had covered several times in his initial examination of the witness and in his re-examination, the following exchange occurred:

THE COURT: Mr. W., this is not an opportunity to ask the same questions -

[Mr. W.]: Okay. No, I -

THE COURT: - or go over what you went over.

[Mr. W.]: I did have concerns if I was even going to make it through today, so - for health, and other reasons. And I've written down about thirty, forty things and I can't get to them all. So, I will save the rest for submissions when I can concentrate and go over this. So, I'm going to keep it brief because I really am getting to the point where I can't even - I'm getting really foggy and can't really think any more. So, I am going to conclude then.

[99] The appellant then asked to place the entire Ministry of Child and Family Development file into evidence. The judge reminded him that the document would have had to come in through a witness, and, further, that it was not at all clear that any part of it was relevant to the proceedings. The appellant also asked to put in an email from a witness that he had elected not to call. Again, the judge advised that that was not possible. Mr. W. then closed his case.

[100] The respondent did not call witnesses, but filed a document as an exhibit by consent.

Was the Appellant Treated Unfairly?

[101] Mr. W. raises a large number of complaints on this appeal. I would group these into four categories. First, he says that the judge failed to understand and accommodate his cognitive impairments. Second, he claims that the judge "stifled [his] voice" by refusing to listen to him. Third, he says that the judge refused to give him an opportunity to present all of his evidence. Finally, he claims that the judge erred in making findings of credibility because she failed to consider his cognitive disabilities.

[102] After a thorough review of the transcript and the reasons for judgment, I can say that all of the contentions are unfounded. The judge listened carefully to the appellant's explanations of his difficulties and appears to have read each of the health documents that he filed. She frequently advised him that the proceedings could be adjourned if he was unable to continue. She, in fact, adjourned and took breaks on all but one of the occasions when the appellant requested them.

[103] The one exception occurred during the cross-examination of the appellant's daughter, a vulnerable witness, by respondent's counsel. The judge considered that, in fairness to the daughter, her cross-examination should be concluded. The appellant was in no way prejudiced by that decision. Proceedings were adjourned before he was called upon to do his re-examination of her, and he was permitted to listen to the digital audio recording of the cross-examination to remedy any lapses in concentration he may have experienced at the time it took place.

- [104] The appellant was allowed to call witnesses out of order, and to get extensions for submissions on evidentiary issues. His preference for doing final submissions in writing was accommodated, as was his desire to have additional time to prepare those submissions. It is difficult to find any request for accommodation that was not granted to him by the judge.
- [105] The appellant seems to take the view that the judge's refusal to file his medical documents as exhibits means that they were ignored. The judge, however, simply ruled that they were not evidence on the trial. She marked them as exhibits for identification, and clearly read each one. She was careful, on each occasion where the appellant raised health concerns, to satisfy herself that he was able to continue with the proceedings before pressing on.
- [106] She also carefully observed the appellant and was able to conclude that he was able to present his case without impairment. While she observed that he was, on occasion, tired, she correctly observed that he was attentive and able to present himself cogently during the trial. He was fully able to follow the proceedings and understand the process.
- [107] There is, then, no substance to the appellant's contention that his cognitive challenges were ignored, that the judge failed to accommodate them, or that they prevented him from presenting his case effectively.
- [108] The appellant's contention that his voice was "stifled" is also without substance. While he cites approximately 70 excerpts from the transcript where he says the judge refused to listen to him, or changed the subject when he spoke, none of them support his contentions. In most of the cases, what he points to are merely judicial interventions aimed at clarifying areas of misunderstanding or attempts to propose solutions to difficulties. At no point was the appellant prevented from raising an issue.
- [109] That is not to say that the appellant was able to do as he pleased during the trial. The judge properly applied rules of procedure and evidence to safeguard the integrity of the proceedings.
- [110] The appellant's contention that the judge refused to allow him to present all of his evidence is based on the fact that the judge imposed time limits on the appellants own re-direct evidence, and on his cross-examination of the investigating officer. Neither limitation was improper.
- [111] As Justice Newbury observed in *Universe v. Fraser Health Authority*, 2022 BCCA 201:
- [78] The objective of 'proportionality' is now expressly recognized as an important part of civil litigation. This objective reflects that no one litigant or group has the right to demand that unlimited time and resources be devoted to a particular case, no matter how important it is. The rights and interests of other litigants in other cases waiting to be heard must be balanced in a fair way against litigants who are before the court, and measures designed to increase efficiency must generally be followed, both in the form of court rules and in judges' management of trials.

- [112] It is apparent that the appellant did not properly prepare for the trial. He was, in the course of the proceedings, still deciding which witnesses he would call, and was still trying to identify and locate some witnesses. Trial time was wasted with applications for subpoenas that should have been issued and served before the proceedings commenced. The appellant clearly had no "roadmap" planned out for the various witnesses. He did not have his questions written out, and his examinations were unstructured and highly repetitive. He failed to observe the distinction between evidence and argument. The appellant's lack of preparedness was a serious handicap for the trial. It resulted in several delays and also some frustration on the part of the appellant. It cannot, however, be attributed to a lack of accommodation by the court.
- [113] The judge only curtailed the appellant's efforts to adduce evidence on two occasions: during his own re-direct evidence, and during his cross-examination of the investigating officer. In both cases, she gave warnings of her intention to set a time limit, and afforded the appellant a generous amount of time. He had every opportunity to fully present his case.
- [114] Moreover, it appears that the appellant's case was exhaustively presented. In his factum, he does not point to any evidence that he was unable to adduce, or show that any aspect of the case was not presented to the judge.
- [115] It is important to note that the appellant's case, at base, ought to have been a simple one. The police investigation consisted primarily of interviews with the complainant. Those interviews were recorded. To the extent that Russian was spoken in the interviews, a translation was made available. The issue of what the police did, and what evidence they had, then, should not have been a matter of contention.
- [116] The appellant did not seek out expert evidence as to how a police interview with a child complainant should be conducted. He presented theories that his ex-wife had "coached" the complainant or fabricated evidence, but apart from his own speculation, there was no evidence to support those contentions. He also suggested that the allegations were part of a scheme by his ex-wife to take custody of the child, but he failed to provide any cogent evidence of such a plot.
- [117] Further, he presented no reasonable basis on which it could be said that the police should have detected a scheme or fabrication. His contention that the police ought to have dismissed the complaint because his ex-wife suffered from mental illness has no basis in reality. People suffering from mental illnesses are not somehow outside of the protection of the law. Further, the appellant showed no basis for concluding that either the timing of, or the nature of her illness affected the credibility of the complaint presented to the police.

- [118] The last category of complaint raised by the appellant is that the judge wrongly made credibility findings without considering the appellant's cognitive challenges. I see no basis for the appellant's assertion. The judge was well aware of the difficulties faced by the appellant. She was also faced, however, with clear reasons to doubt his credibility, including the appellant's tendency to exaggerate and twist the evidence, and the discrepancies between his testimony and documentary evidence.
- [119] In any event, the appellant's credibility was not a major factor in this case. For the most part, the material facts were a matter of record. Such credibility issues as arose would have gone primarily to issues of damages rather than to the question of whether the appellant had made out a cause of action.
- [120] In short, I am unpersuaded that there was any lack of fairness in the trial process, or that the judge fell short in her duty to accommodate the appellant. He failed in his claim because the evidence did not support it, not because of some deficit in the way it was presented.

Conclusion

[121] I would dismiss the appeal.

"The Honourable Mr. Justice Groberman"

I agree:

"The Honourable Madam Justice Newbury"

I agree:

"The Honourable Madam Justice Stromberg-Stein"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/24/00/2024BCCA0019cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/m-p-w-v-victoria-city-2024>

Prepared on 26 October 2026 · Esheria