
CANADA / JUDGMENT

Mittenen v. Dudley

2015 BCSC 2247

COURT

Supreme Court of British Columbia

DECIDED

13 March 2015

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

2015 BCSC 2247 Mittenen v. Dudley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mittenen v. Dudley,

2015 BCSC 2247

Date: 20150313

Docket: 163876

Registry: New Westminster

Between:

Brian William Mittenen

Plaintiff

And

Jake Edward Andrew Dudley

Defendant

Before: The Honourable Mr. Justice Verhoeven

Oral Reasons for Judgment

Counsel for Plaintiff:

S.G. Price

Counsel for Defendant:

J.A. Michaels

Place and Date of Hearing:

New Westminster, B.C.

March 11-13, 2015

Place and Date of Judgment:

New Westminster, B.C.

March 13, 2015

I. Introduction

- [1] The plaintiff claims damages for personal injuries suffered in an assault and battery that occurred December 24, 2012. On that occasion the plaintiff, Mr. Brian Mittenen, was punched several times about the face and head by the defendant, Mr. Jake Dudley.
- [2] Mr. Dudley admits punching Mr. Mittenen, although he says he punched him twice only. Mr. Mittenen does not clearly recall the number of blows, but says there were repeated blows.
- [3] The immediate injuries were relatively minor. There is no medical evidence. However, photos taken immediately after the incident show discolouration, or, in other words, redness, to the right side of the victim's face and possibly an abrasion and small area of bruising over the right eye. Mr. Mittenen testified that he also suffered from head pain, neck pain, swelling and headaches following the incident.
- [4] Ms. April Milks, who was with him at the time, testified to extensive bruising over Mr. Mittenen's face and marks and bruising on his arm as well. Mr. Mittenen did not mention this in his evidence. He did not mention any arm injuries, and there is no other evidence to support that.
- [5] Ms. Milks also testified that Mr. Mittenen suffered a gash on the face, but the plaintiff did not say that. However, she acknowledged that there was no broken skin and no bleeding.
- [6] The major ongoing complaint of the plaintiff is psychological rather than physical. The plaintiff contends that he suffered and still suffers from fearfulness, in the form of a continuing fear that Mr. Dudley will attack him again. He testified that he suffers from ongoing stress and anxiety. He also complains of ongoing headaches sporadically. He argues that the psychological effects have been severe and that he has been diagnosed with Post-Traumatic Stress Disorder, or PTSD.
- [7] Mr. Mittenen submits that he should be awarded non-pecuniary damages. No specific amount was submitted. He submits that the sum of \$20,000 should be awarded for cost of future care in respect of future psychological therapy, and also argues for special costs.

- [8] The defendant admits liability for the attack. He admits the assault and battery, although, as noted, he contends that the number of blows were fewer than what has been submitted on behalf of the plaintiff.
- [9] Mr. Dudley acknowledges that he is responsible. He has indicated remorse and contrition. He wrote an apparently sincere letter of apology to Mr. Mittenen on May 14, 2013. The letter is in evidence. However, this lawsuit ensued notwithstanding the letter and apology.
- [10] Immediately after the incident, Mr. Dudley was arrested and charged with assault. However, no criminal sanctions have ensued. Mr. Dudley testified that he understood the Crown decided to implement what was referred to as alternative measures. The meaning of that is not entirely clear, but in any event there was no criminal conviction or criminal sanction resulting from the charge.
- [11] The plaintiff is a manager of some description who works at the Port of Vancouver. The defendant is an elementary school teacher.
- [12] Ms. Milks and the defendant were in a common law relationship and then were married in 2011. They have two children, both girls, who at the time of the incident were aged four and two.
- [13] Ms. Milks and Mr. Dudley agreed to separate in early 2012 while Ms. Milks was still residing with Mr. Dudley. They differ somewhat as to the date that they agreed to separate. She says March of 2012; he says May of 2012. The difference is not material to this decision.
- [14] Ms. Milks continued to reside in the matrimonial home until June 15, 2012. At that time she moved into the residence of Mr. Mittenen, the plaintiff, with the two children. Mr. Dudley remained in the former matrimonial home, a single family residence in Maple Ridge. Sharing of parenting time of the children was agreed to on a roughly equal or week-to-week basis following the separation.
- [15] On December 24, 2012, Ms. Milks and Mr. Dudley arranged for Ms. Milks to pick up the children from Mr. Dudley's residence for access and parenting purposes. She had requested that the exchange take place at a neutral location, but Mr. Dudley refused. She testified that she had concerns about attending at Mr. Dudley's residence alone. She testified that on a prior occasion he had forced her to have a conversation with him in a vehicle by getting into the vehicle and removing the ignition keys from her. She also contends that he took her cell phone. He admits that he acted inappropriately on a prior occasion in seeking to have a conversation with her that she was unwilling to have. She testified that this incident occurred very shortly before December 24th. Mr. Dudley says it took place several months before that, shortly after the separation. Once again, that particular issue is not material to this decision.
- [16] In any event, as noted, Ms. Milks and Mr. Mittenen attended the home on December 24, 2012. Ms. Milks did not want to attend alone. Mr. Mittenen parked in the driveway of the residence, with the vehicle facing out towards the street, at about 9:30 a.m. Ms. Milks

opened the rear doors of his vehicle, a Dodge Durango SUV. Ms. Milks stepped out of the vehicle to help the children get into the rear of the vehicle. Mr. Mittenen remained in the front of the vehicle, in the driver's seat, buckled and facing away from the residence, towards the street.

- [17] Mr. Dudley came out of the home with the two children. Upon seeing Mr. Mittenen, he suddenly became very angry; in fact, enraged. He said or yelled some things. The accounts as to what was said differ somewhat. Ms. Milks says that he said to her, I take it incredulously, "You brought him to my house?" Mr. Mittenen recalls hearing something like "Get your own family" being yelled at some point. Mr. Dudley acknowledges saying something like "Go find your own family."
- [18] This was the first occasion post separation when Mr. Dudley and Mr. Mittenen would have encountered each other.
- [19] In any event, what is clear is that Mr. Dudley then entered the front passenger side of the vehicle and punched the right side of Mr. Dudley's face several times. As noted, Mr. Dudley says it was twice. Mr. Mittenen merely says that there were repeated blows, but has no specific recollection or evidence concerning the actual number of blows. Ms. Milks says that there were many repeated blows. Certainly more than ten and possibly as many as 20, she says.
- [20] In my view, the defendant was likely minimizing the number of blows. I do not accept that there were only two blows. He testified as well that he dislocated a finger on the second blow, therefore there could not have been more. However, the same reasoning could apply after any number of blows.
- [21] What is clear is that the plaintiff was taken completely by surprise and no doubt was shocked by the attack. That, coupled with the passage of time, explains why he would not have specific recall as to the details of the attack.
- [22] The defendant is a large man, and relatively youthful. However, the attack took place within a confined space.
- [23] Mr. Dudley also acknowledges taking a cup of coffee that was in the vehicle and throwing it at Mr. Mittenen.
- [24] Fortunately for all concerned Mr. Dudley was not able to inflict more serious personal injuries upon Mr. Mittenen. As I have indicated, the immediate physical injuries were quite minor. As to the specific number of blows, of course, that is not terribly important in the scheme of things. However, I find that there were more than two blows and probably there were five to ten blows. What matters more than the specifics of the attack are the consequences in terms of injuries.

- [25] Mr. Dudley testified that the plaintiff was smirking at him while he was seated in the vehicle prior to the attack. I reject this evidence. Mr. Mittenen was not there in any sense to provoke Mr. Dudley. He was there at the request of Ms. Milks, and he remained in the vehicle, facing away from the home, and nothing in his behaviour was in any sense inappropriate.
- [26] For whatever reason, the defendant was simply enraged that the plaintiff was there, and he acknowledges that his behaviour was inexcusable. I reject any contention that there was any kind of provocation in any legal sense on the part of the plaintiff.
- [27] The plaintiff also testified that the defendant after leaving the front seat, in fact being pulled away by Ms. Milks, re-entered the vehicle from the rear door behind the driver's seat and attempted to attack him further. However, it appears that no further significant blows were landed on that occasion. There was somewhat of a struggle. I do find that the defendant attempted to attack the plaintiff again, but was essentially unable to inflict further injury.
- [28] The children, who were nearby, in the back seat by this point, were upset and crying. The defendant's mother came out of the home. The defendant stopped the attack. The plaintiff, Ms. Milks and the two children drove away. The police were immediately called. The police attended within minutes. Mr. Dudley was arrested and charged thereafter.
- [29] Mr. Mittenen attended Ridge Meadows Hospital later that day. He was treated and released. However, the hospital records are not in evidence, and as I have noted, there is no medical report or medical evidence as such.

II. Assessment of damages

- [30] There are two components to the injuries and loss: first, physical, and the other and the more significant one from the point of view of the plaintiff, psychological.
- [31] From a physical point of view, the immediate physical symptoms were mild or, at most, moderate. There was bruising. There was possibly an abrasion. These are the types of injuries that typically resolve without any specific medical attention, usually within a matter of days or, at most, weeks.
- [32] The plaintiff was scheduled to return to work shortly after the incident, after the Christmas break, and did not lose work as a result of the incident. There is no claim for wage loss or loss of earning capacity.
- [33] The plaintiff also testified that he had soreness in the head and neck area after the incident, and I accept that that also occurred, but these were injuries that would have resolved and I find did resolve within a relatively short period of time.
- [34] The ongoing injury complained of by the plaintiff is of headache. He testified to what he described as migraine-type headaches resulting from the incident. There was, however, no medical evidence to support the description of the headaches as migraine.

- [35] The evidence that the plaintiff has adduced with respect to the complaint of ongoing headache injury is generally not very persuasive. While the plaintiff seemed to be an honest and forthright witness, he also seemed to be in a number of respects a poor historian. Details were lacking in his evidence, which was often vague and unspecific in nature. In the circumstances, I must remind myself of the caution that is required when a plaintiff presents claims in circumstances such as this.
- [36] In submissions the defence referred to my own decision in *Sendher v. Wong*, 2014 BCSC 140. I adopt what I said there in paras. 97 and 98:
- [97] As is common with injuries of the sort the plaintiff complains of, the plaintiff's claims are based largely on her own subjective reports of pain.
- [98] In such circumstances the court must take a cautious approach. The appropriate approach to assessing injuries which depend on subjective reports of pain was discussed in *Price v. Kostyba* (1982), 70 B.C.L.R. 397 (S.C.) by McEachern C.J. In referring to an earlier decision, he said:

In *Butler v. Blaylock*, [1981] B.C.J. No. 31, decided 7th October 1981, Vancouver No. B781505, I referred to counsel's argument that a defendant is often at the mercy of a plaintiff in actions for damages for personal injuries because complaints of pain cannot easily be disproved. I then said:

I am not stating any new principle when I say that the court should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery.

An injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence - which could be just his own evidence if the surrounding circumstances are consistent - that his complaints of pain are true reflections of a continuing injury.

- [37] In addition, of course, in more general terms, the burden remains with the plaintiff to establish that the incident in question caused the injuries complained of on a balance of probabilities.
- [38] The plaintiff testified that he did not suffer from headaches prior to the incident in question. However, he complained of headaches to his general practitioner, based on clinical records that were shown to him in cross-examination, on December 11 and again on December 20, 2012; thus, shortly before the incident in question. When confronted with those records in cross-examination, he conceded that they must be accurate, and that he must indeed have complained of those problems at that time.
- [39] The complaints must have been severe enough that the doctor saw fit to order a CT scan, which he did. The CT scan was ordered not for this incident, but for the previous problem, whatever it was.

- [40] In his evidence on the question of headaches, initially the plaintiff seemed to say that the headaches were a somewhat temporary concern. As he put it, he had "a lot of headaches for quite a while." His evidence in general was quite vague on this.
- [41] He was then asked, also in chief, whether he still has the headaches, and he said yes, he does. He testified that the last such headache he had was the day before he testified, and that when he does get the headaches, he takes Tylenol some of the time. No real details were given in examination in chief about the headaches from which the plaintiff says he suffers.
- [42] In cross-examination, he was asked more questions about the headaches, and acknowledged that they do not occur every day; they are sporadic. Again, when he gets headaches, he will sometimes take a couple of Tylenol. He also acknowledged that he has not sought any treatment of any kind or obtained any advice about treatment for the headaches.
- [43] The plaintiff saw a psychologist, Mr. Colby, for assessment in respect of this litigation on November 12th, 2014. Mr. Colby reports, on the fourth page of his report, that Mr. Mittenen said that his headaches continued for a month. However, Mr. Colby also reports in other parts of the report that Mr. Mittenen has complained of ongoing headaches. However, there is no detail in the report. Ms. Milks was the only collateral witness for the plaintiff. She did not mention any signs or observations relating to headaches in her evidence.
- [44] In conclusion, and on the whole of the evidence, I find that the plaintiff suffered from headaches for some weeks post incident, for at least a month, but I am unable to find, on a balance of probabilities and on the evidence as a whole, that the plaintiff has established, as he must, that he continues to suffer from headaches today that are ongoing and that are caused by the incident in question, as opposed to having some other cause.
- [45] In any event, the headaches that the plaintiff complains of are not in any sense debilitating. As noted, no treatment has been sought by the plaintiff other than, by his testimony, seeing his general practitioner on one occasion about three weeks after the incident in question. There is also no indication in the plaintiff's evidence that he intends to seek any treatment for headaches in the future.
- [46] I move on to the psychological component of the case, which the plaintiff contends is more significant. The plaintiff contends that due to the incident in question, he has developed Post-Traumatic Stress Disorder and has also been diagnosed with clinical depression. For that he relies upon the opinion of the psychologist, Mr. Colby, in his report dated November 25th, 2014, having to do with the examination on November 12th, 2014. Mr. Colby also testified at the trial.
- [47] The plaintiff's evidence at trial concerning the psychological consequences of the injury was quite limited in scope. He testified in chief that after the incident, from a mental perspective, he was not doing well. He was fearful and he was afraid of being attacked again by Mr. Dudley. He also testified that following the incident he was always in fear. He was careful to lock doors, was somewhat paranoid, even while, for example, in the shower, and

he always had a feeling that someone was going to attack him. He was afraid about being in retail stores in Maple Ridge, the community where the defendant resides. He states that he was so much in fear that the day after the incident he bought a baseball bat with which to defend himself. He testified that he is still afraid of Mr. Dudley, and, in his mind, there is nothing to stop Mr. Dudley from attacking him again.

- [48] However, he testified that the fear from which he continues to suffer has improved somewhat, although he remains continually in fear and is still always looking over his shoulder. He testified that he was afraid while at work at the Port.
- [49] Mr. Mittenen had counselling approved by Victim Services for his psychological condition. He was initially approved for 24 sessions and then another group of 24 sessions, so 48 in total. Of those, 27 sessions have been utilized. The frequency of utilization of the sessions has diminished over time and has essentially stopped.
- [50] During the last several months there have been only two counselling sessions. Taking as a milestone date the visit to Mr. Colby, there were two sessions with the counsellor since then, the last being January 14th, 2015, about two months ago. No other treatment has been sought for the psychological condition.
- [51] Ms. Milks testified that the plaintiff has lost enjoyment of life as a result of the incident. He is not as happy a person as he was before. She gives evidence generally of a change in personality from happy to unhappy. She specifically denied, however, that Mr. Mittenen has displayed irritability.
- [52] However, Mr. Colby's report differs quite markedly from the evidence I heard at trial. Mr. Colby's report indicates that Mr. Mittenen provided far more extensive evidence of psychological consequences resulting from the incident in question.
- [53] I will just give a few examples. On p. 8 of the report, Mr. Colby reports that Mr. Mittenen said as follows:

He says when he sees people who look like his attacker in public, he becomes nervous and walks the other way.

[54] That was not said in evidence.

[55] The next paragraph of Mr. Colby's report states:

Mr. Mittenen says when he hears news stories that deal with violence it makes him feel bad and it returns a feeling of helplessness to him.

[56] Again, that was not said in his evidence.

[57] Mr. Colby's report refers, also on the 8th page, to hot flashes, which were not mentioned by the plaintiff in his testimony. Mr. Colby's report states:

Brian says that he does not feel he has any pizzazz and is less enthused about life. He finds himself constantly annoyed about being attacked. He bought bear spray to keep in the house and also bought a baseball bat. He notes that he does not play baseball. Brian says never before in his life has he felt like this and that since the assault he has a sense of vulnerability in response to noises around the house. He gets up in the middle of the night if he thinks he heard a noise.

[58] Continuing with the quote:

Brian says that if they are watching TV, he will not watch police shows or shows with violence. He says recently April was watching *Sons of Anarchy* and he could not watch it. He does not watch reality TV and avoids action-oriented violent movies. He wants to watch TV shows that are happy. He reacts to news reports about violence in the community, especially in terms of interviewing victims. Brian says he both empathizes with them and relives his own victimization.

[59] And:

The Beck Depression Inventory-II was administered to Mr. Mittenen. His scores indicate a severe level of depression, as he states that he is greatly disappointed in himself, has had thoughts of killing himself, and has difficulty finding pleasure. He worries about the future. He reports he has difficulty concentrating, does not have energy, and is irritable.

[60] At trial, Mr. Mittenen did not testify to most of the things I just referred to, and specifically did not testify that he has had suicidal thoughts or that he is worried about the future or has difficulty concentrating or does not have energy or is irritable. Ms. Milks in her testimony, as noted, specifically denied any signs of irritability.

[61] Mr. Colby reports that Mr. Mittenen said:

He says he has hot and cold spells and periods of dizziness. He says he has feelings of complete exhaustion and fatigue and gets tired out completely while working. He says he is exhausted in the mornings and feels that he has nervous exhaustion. Mr. Mittenen further states that as a result of the assault, he feels afraid of strange people and places, he is often unhappy and depressed, and is frequently miserable and blue. He states that worrying constantly gets him down and more things get on his nerves. He says he has become shy and sensitive, his feelings are easily hurt. Criticism will upset him and he is thought of as a touchy person. He feels that others do not understand him. As a result, he is now on guard, even with friends, and finds himself easily upset and irritated. Little annoyances will get on his nerves and people will annoy and irritate him.

[62] I could go on, but I do not think it is necessary to do so. In summary, very little of what Mr. Colby relied upon in giving his opinions in his report was actually testified to at trial. Therefore, the evidence relied upon by Mr. Colby is largely hearsay.

[63] The fact that the evidence is largely hearsay does not render it inadmissible. However, the weight to which I can give the evidence when it is not sworn to in court and is not subject to cross-examination is certainly affected.

[64] In *Mazur v. Lucas*, 2010 BCCA 473, the Court of Appeal dealt with the question of the weight that could be given to expert opinions that are not founded in the evidence. At para. 40, in summarizing, the court states:

The weight the trier of fact ultimately places on the opinion of the expert may depend on the degree to which the underlying assumptions have been proven by other admissible evidence. The weight of the expert opinion may also depend on the reliability of the hearsay, where that hearsay is not proven by other admissible evidence. Where the hearsay evidence (such as the opinion of other physicians) is an accepted means of decision making within that expert's expertise, the hearsay may have greater reliability.

[65] In diagnosing Post-Traumatic Stress Disorder and Persistent Depressive Disorder, Mr. Colby acknowledged that, at least with respect to Post-Traumatic Stress Disorder, the diagnosis was essentially dependent on a shopping list of factors grounding the diagnosis, and that if the grounds were not established, then it followed that the diagnosis could not be made.

[66] Given the evidence on the whole, including its hearsay nature and the cautions and question marks I have concerning the credibility of the plaintiff's testimony in this respect, I am unable to place much weight on the opinion of Mr. Colby. That is no fault of Mr. Colby. He is of course dependent upon the information that he received from the plaintiff.

[67] I therefore conclude that it is not established by the plaintiff in the evidence that he suffers from a clinically diagnosed Post-Traumatic Stress Disorder, or clinically diagnosed Persistent Depressive Disorder.

[68] However, I do accept, on the basis of Mr. Mittenen's own evidence and the other evidence adduced, including that of Ms. Milks, that Mr. Mittenen has ongoing psychological sequelae due to the incident. The fact that they may not have been given a formal medical label does not mean that they are not real.

[69] The ongoing fears that Mr. Mittenen has suffered from consist of fears of being attacked by Mr. Dudley. In my view the fears are irrational. Mr. Dudley, as I mentioned, gave a sincere apology several months after the incident in question, and there is no suggestion in the evidence that there is any possible basis whatsoever to think that Mr. Dudley would repeat the attack on Mr. Mittenen. Nonetheless, whether the basis is irrational or not does not mean the fear is not real. I simply conclude that Post-Traumatic Stress Disorder and clinical depression as such are not proven.

[70] I accept that psychological consequences of the attack have persisted for a long time. However, I find that the plaintiff's psychological condition, whatever description might be given to it, has improved substantially and that it continues to improve. There is no medical prognosis. Mr. Colby's report, even if I were to accept the conclusions, does not offer any prognosis.

- [71] Ms. Milks testified that the condition is getting better and at times Mr. Mittenen seems happy, such as when playing with the children. The plaintiff himself was asked how the symptoms are progressing and how severe they are currently. He did not give any clear answer to that. He simply repeated that he still suffers from anxiety, stress and fear.
- [72] He was asked about what has helped. He said essentially only the passage of time helps, and the fact that the incident has not occurred again. He also acknowledged that the treatment sessions that he has undertaken have been helpful.
- [73] In his report, Mr. Colby suggested two modes of treatment. One is professional psychological counselling. The report indicates that the counselling would extend for two years and would cost \$20,000. The evidence at trial changed somewhat from what is in the written report, in that Mr. Colby indicated that two years would be the maximum length of treatment that he would suggest. The number and duration of treatments that would be warranted would depend on the progress that would be made over time. He also suggested the possibility of psychotropic medications to reduce anxiety and depression, for which Mr. Mittenen would need to see a doctor, as Mr. Colby is not a medical doctor.
- [74] Mr. Mittenen, however, has not pursued either form of treatment, or any other form of treatment. As I have indicated, the therapy sessions have diminished. Mr. Mittenen has not explored other treatments. I take that fact as an indication that Mr. Mittenen does not believe his psychological condition requires further treatment, or that he would benefit from it. I also take the lack of any actual conduct by Mr. Mittenen to pursue further treatment as an indication of lack of severity of the condition.
- [75] In my view as well, on all of the evidence, even if the defendant were to fund further treatment of the kind referred to by Mr. Colby, it is unlikely that the plaintiff would utilize it.
- [76] I described the tort of assault and battery in a decision I rendered in 2009, *McBeth-Kearns v. Marples*, 2009 BCSC 802, at para. 67:

Assault is the intentional creation of the apprehension of imminent harmful or offensive contact. Battery consists of intentionally causing a harmful or offensive contact with another person. Assault should be distinguished from battery, although the two are often blurred together and called "assault": Allen M. Linden and Bruce Feldthusen, *Canadian Tort Law*, 8th ed. (LexisNexis Butterworths, 2006) at 46. In this case, as in most cases, blurring of the terms does not matter very much as the assault and the battery occurred in rapid succession, and for the purposes of assessment of damages, the assault is insignificant.

- [77] Again, in summary terms, the physical consequences of the assault and battery were relatively mild, consisting of the short-term injuries I described and ongoing headaches for some period of time. The psychological consequences were far more significant. They mostly consist of ongoing fear and anxiety specifically related, however, to the fear of the possibility of an attack by Mr. Dudley, which, as I said, is irrational, though real.

- [78] I accept as well that the ongoing fears have resulted in some degree of loss of enjoyment of life on the part of Mr. Mittenen. However, he has improved and in my judgment is likely to continue to do so. Further progress is therefore expected. Although, as I said, I have no actual formal prognosis from an expert, one would expect improvement based on the natural progression of things and continuation of the past.
- [79] In summary, the attack was violent and has resulted in some significant persistent injuries, mainly in the psychological realm.
- [80] The authorities given to me by counsel with respect to the assessment of non-pecuniary loss were not particularly helpful as none of them relate to very similar circumstances, as counsel acknowledged.
- [81] The plaintiff did not provide a specific figure for non-pecuniary loss, other than by reference to other cases of what were acknowledged to be much more significant injuries and effects. The defence submission was that non-pecuniary loss should be set in the amount of \$500 to \$5,000.
- [82] In my view in all the circumstances of the case, on the basis of the evidence as a whole, a fit and proper award for non-pecuniary loss is the sum of \$17,500.
- [83] I make no award for cost of future care, for the reasons I have stated.
- [84] During the submissions there was reference to claims for subrogated costs under the Health Care Recovery Act or for Victim Services. However, the submissions I received in that respect were incomplete.
- [85] As requested I will allow liberty to make further submission on the question of subrogated claims, provided that an application to deal with that is initiated within 30 days. That is by request to the trial scheduling manager to make further submissions. Submissions may be submitted in writing on a schedule that I will set if a request is made for further submissions. If counsel wish as well to have an oral hearing, they may so indicate in the written submission, or they may indicate that they are content to simply make written submissions.
- [86] Special costs were sought. In my view there is no basis for special costs in this case. There was no reprehensible conduct in the litigation itself. The reprehensible conduct occurred in the assault and battery. Compensation has been ordered for that on a civil basis. There were also criminal proceedings, although they resulted in no sanction. I note as well the pre-litigation apology that the defendant made.

[87] The amount of the award is within the small claims limit. However I am not prepared to limit or deny costs on that basis. In my view the plaintiff had good reasons to bring this matter to the Supreme Court. The plaintiff sought damages in an amount that were unspecified, but could have easily exceeded the small claims limit of \$25,000, certainly if my findings had been different. So in my view the plaintiff was not acting unreasonably in seeking assessment of his claims in this court rather than the Provincial Court.

"Verhoeven J."

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/sc/15/22/2015BCSC2247.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mittinen-v-dudley-2015>

Prepared on 29 October 2026 · Esheria