
CANADA / JUDGMENT

Robinson v. Gallamore

2022 BCSC 993

COURT

Supreme Court of British Columbia

DECIDED

13 June 2022

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2022 BCSC 993 Robinson v. Gallamore

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Robinson v. Gallamore,

2022 BCSC 993

Date: 20220613

Docket: S183102

Registry: Vancouver

Between:

Lucas Robert Robinson

Plaintiff

And

Derek Gallamore and the Corporation of Delta

Defendants

Before: Master Muir

Reasons for Judgment

In Chambers

Counsel for the Plaintiff, appearing via video conference:

Peter T. Busch

Counsel for the Defendants, appearing via video conference:

Karen R. Zimmer

Place and Date of Hearing:

Vancouver, B.C.

May 11, 2022

Place and Date of Judgment:

Vancouver, B.C.

June 13, 2022

Introduction

[1] This is an application by the plaintiff for orders that:

- a) the defendants, Derek Gallamore ("Cst. Gallamore") and the Corporation of Delta ("Delta") (collectively, the "defendants"), produce all documents related to disciplinary action, public complaints, and internal complaints through human resources made against Cst. Gallamore;
- b) the defendants answer interrogatories posed by the plaintiff in relation to these matters and in relation to those documents produced relating to disciplinary action, public complaints, and internal complaints through human resources against Cst Gallamore; and
- c) the plaintiff shall be permitted to use any documents related to disciplinary action, public complaints, and internal complaints through human resources made against Cst. Gallamore, including those documents already in the plaintiff's possession.

Background

[2] The underlying action is a claim in defamation, where the plaintiff alleges he was slandered on two occasions on February 27, 2016 by Cst. Gallamore.

[3] Cst. Gallamore is alleged to have been at the Tsawwassen Springs premises while a fundraiser was being held to raise funds to replace a barn that had burned down on the plaintiff's parents' property. At the time of the fundraising event, the plaintiff was one of the organizers.

[4] It is alleged that Cst. Gallamore said to the plaintiff in front of others at the event:

We busted you for coke; we busted you for trafficking; what I'm trying to say though is your brother came to me last week for leniency. I said you know what Lucas? You sold coke for a long time, everybody knows this, everybody is aware of this.

[5] Later that day, Cst. Gallamore is alleged to have been at the Rose and Crown Pub in Delta, BC, where he again allegedly slandered the plaintiff in front of others by stating:

I'm a cop.

Stop filming, you're being ridiculous

Lucas is a crack dealer.

You're a cocaine dealer, stop, stop filming.

I arrested Lucas before. We did a search warrant at Lucas' house and seized a bunch of crack and cocaine, whatever

Actually, Lucas get outta' here

So we arrested Lucas because he's a drug dealer.

Yeah I know he's a loser.

LUCAS ROBINSON! YOU KNOW HIM?

- [6] In the notice of civil claim filed November 23, 2018, the plaintiff alleges that, at the time Cst. Gallamore's statements about him were made, he had not been tried on any drug charges, but eventually entered a plea deal where he pleaded guilty to possession of marijuana for the purpose of trafficking.
- [7] The plaintiff also alleges that Cst. Gallamore has harassed him for years without cause, that Cst. Gallamore has a history of unprofessional conduct, that Delta, as Cst. Gallamore's employer, was aware of Cst. Gallamore's unprofessional conduct in the past and should have known that he was a risk to the public and is, therefore, liable for continuing to employ him.
- [8] The plaintiff argues that Delta is jointly and severally and vicariously liable for Cst. Gallamore's actions. The plaintiff also pleads that Cst. Gallamore and Delta acted maliciously, violently, oppressively, and grossly recklessly, and seeks punitive or exemplary damages.
- [9] In the response to civil claim filed October 1, 2018 on behalf of the defendants, it is noted that from September 2005 to September 2011, Cst. Gallamore was assigned to the Drug Squad of the Delta Police Department.
- [10] It is pleaded that the plaintiff was known to Cst. Gallamore from 2009, when an investigation led to the plaintiff being charged with possession of cocaine for the purposes of trafficking. The plaintiff was arrested and found with a quantity of cocaine secreted in his groin area.
- [11] Crown Counsel approved charges of trafficking cocaine against the plaintiff, who subsequently pleaded guilty to possession.
- [12] Further, in 2011, Cst. Gallamore and other officers executed a search warrant on the plaintiff's premises and found a substantial quantity of various drugs and other items indicative of trafficking. Several charges of trafficking were brought against the plaintiff as a result. On March 1, 2016, the plaintiff entered a guilty plea for trafficking in marijuana, the charges for cocaine trafficking were stayed pursuant to a plea agreement.

- [13] The defendants say that the charges and guilty pleas were a matter of public record and a story about these events was published in a Delta paper in 2011.
- [14] These facts are substantiated by the affidavit of Cst. Gallamore on this application.
- [15] Amongst other things, the defendants rely on the defence of justification. They also assert that the action brought by the plaintiff is an abuse of process, unnecessary, and vexatious.

The Parties' Positions

- [16] The plaintiff argues that the documents he sought on this application are "directly relevant", and that common sense indicates these documents are producible.
- [17] He also says the documents are required to show malice on the part of the defendants.
- [18] The plaintiff argues that prior knowledge of conduct issues with Cst. Gallamore creates "aggravating factors" and the defendants could be liable for aggravated damages.
- [19] The defendants submit that this application is abusive and brought for an improper purpose and should be dismissed. They note that on his public Facebook account, the plaintiff has posted various things about this action, including publishing the first and third pages of the notice of civil claim in this action with the following comments:

And do you know what the best part is the best part is that we get to dig up every dirty little piece of corruption Galamore [sic] has ever done every police complaint every discreditable conduct conviction everything and then we get to use it against him and we can just post it all here on Facebook for everybody it's a work a art;

Think how much the lawyer fees it's going to save to air everything over Facebook and then our lawyers can simply grab the information off of our Facebook saving us so much and giving public the awareness that they deserve";

It's GLORIOUS

- [20] Further, the defendants assert the only documents of the type sought on this application that would be relevant are those where the complainant is Mr. Robinson and those have been produced. They argue that the other documents being sought are nothing more than a fishing expedition.
- [21] The defendants say that the arguments based on aggravated damages and malice are ill-founded.

Analysis

- [22] The documents are sought under both Rules 7-1(10) and 11 of the Supreme Court Civil Rules.

- [23] Rule 7-1(10) is a demand for production of documents that may go to prove or disprove a material fact. Rule 7-1(11) is a demand for documents that relate to any or all matters in question in the action and, to justify the broader disclosure, there must be some evidence of a connection between the documents sought and the issues in the case beyond a mere possibility: *Araya v. Nevsun Resources Ltd.*, 2020 BCSC 511 at para. 73.
- [24] Here, the plaintiff has brought evidence of prior complaints against Cst. Gallimore. The defendants, relying on *Edmonton (Police Service) v. Alberta (Law Enforcement Review Board)*, 2014 ABCA 267 at paras. 36-42 and *Larkin v. Johnson*, 2019 BCSC 164 at para. 64, argue that this evidence is inadmissible, as the plaintiff has not obtained leave to use these documents and, as they are documents relating to other investigations, are subject to a quasi-undertaking of confidentiality.
- [25] As noted, the plaintiff seeks leave to use any documents related to disciplinary actions, public complaints, and internal complaints that he has in his possession. I have concluded that the plaintiff should have leave to use the documents in his possession that were appended to his affidavit for the limited purpose of evidence on this application. The implied undertaking of confidentiality will continue to apply to them and they are not to be used by the plaintiff in any other fashion in this action or otherwise.
- [26] To the extent that the plaintiff is seeking leave to use any other, unidentified, documents, that application is dismissed.
- [27] As to the documents sought on this application, I do not believe that they are directly relevant or that common sense in any way dictates their production.
- [28] Nor, in my view, are they producible on the basis of malice or a claim for aggravated damages. The plaintiff references *Grassi v WIC Radio Ltd.*, 2000 BCSC 185, where at para. 89, the court noted:
- [89] In *Hill [v. Church of Scientology]*, [1995] 2 S.C.R. 1130, where the categories of general damages and aggravated damages were employed, Cory J., addressing the latter, stated the following general principles at 1205-1206:

Aggravated damages may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement.

These damages take into account the additional harm caused to the plaintiff's feelings by the defendant's outrageous and malicious conduct. Like general or special damages, they are compensatory in nature. Their assessment requires consideration by the jury of the entire conduct of the defendant prior to the publication of the libel and continuing through to the conclusion of the trial. They represent the expression of natural indignation of right-thinking people arising from the malicious conduct of the defendant.

If aggravated damages are to be awarded, there must be a finding that the defendant was motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff....

[29] The prior public and internal complaints of others against Cst. Gallamore could hardly be relevant to such a determination.

[30] The documents sought, going as they do to prior complaints against Cst. Gallamore, could be producible if the evidence was sufficiently probative as to amount to admissible similar fact evidence.

[31] It is not enough for similar fact evidence to be relevant. In *R. v. Handy*, 2002 SCC 56, the court held:

[66] In *R. v. D. (L.E.)*, [1989] 2 S.C.R. 111, Sopinka J. further confirmed his approach to propensity evidence at p. 120:

Cross on Evidence (6th ed. 1985) contains a concise statement of the "similar facts rule" at p. 311 with which I agree:

. . . evidence of the character or of the misconduct of the accused on other occasions . . . tendered to show his bad disposition, is inadmissible unless it is so highly probative of the issues in the case as to outweigh the prejudice it may cause.

[32] Counsel for the defendants referred me to my decision in *Addison v. Whitefox Technologies Ltd.*, 2014 BCSC 633. In that decision, I refused an application for production of documents where the evidence would only show a disposition to commit the acts alleged and did not rise to the level of overcoming the exclusionary rule for similar fact evidence.

[33] *T.L. v. Chan*, 2000 BCSC 1624, referenced in *Addison*, however, noted:

[15] In *F. v. A Psychiatrist* [(1984), 53 B.C.L.R. 216 (S.C.)], McEachern C.J.S.C., as he then was, addressed the question whether the defendant could be compelled to answer the question whether he had been disciplined by the College of Physicians and Surgeons for having sexual relations with a patient who was not a party to the action. The learned Chief Justice said the following at p. 221:

In view of the right of the plaintiff to obtain information relating to the matter in issue (intercourse with a patient), I think the plaintiff is entitled to discovery with respect to similar facts so that she may be in a position to make a proper submission at the trial on a voir dire or otherwise on the question of admissibility of similar fact evidence. To prevent this question from increasing the scope of discovery unreasonably, I think disclosure may be limited in this case to complaints of intercourse with a patient and not complaints against the defendant generally.

If I were only dealing with an application for production of documents in the possession of the college, I think, subject to the question of informants' privilege already mentioned, I would order production of documents with the names and identities of complainants deleted and leave it to the plaintiff, with such information in hand, to make a further application for names and identities if the information developed in that way could arguably be admissible. But on the continued examination for discovery of the defendant, he will be examined on information already known to him and I see no answer to the plaintiff's right to explore that question, unfortunate as that may be to complainants who may prefer not to be identified. That being so, I see no reason artificially to limit the production of the college to which I think the plaintiff, on the authorities, is entitled.

Subject to the question of privilege for unidentified informants, therefore, the college must produce documentation in its possession relating to complaints against the defendant about intercourse with patients and the plaintiff may also examine the defendant for discovery on those matters.

- [16] In my opinion, if questions directed to the existence of similar fact evidence may be asked on discovery, a party should be able to demand production of documents that pertain to events that are in the nature of similar fact evidence before convening the discovery. However, the notice to produce documents must be framed in terms that extend the demand only to documents pertaining to other incidents or alleged incidents sufficiently similar to the subject matter of the claim that they might constitute similar fact evidence.
- [34] Alternatively, the documents sought could be producible if they provided evidence in support of the allegation that Cst. Gallamore was a risk to the public. Of course, that allegation being made as it is in the context of a defamation action, must be interpreted to mean that Delta knew that Cst. Gallamore was a risk to the public in that he was likely to defame someone.
- [35] As noted, in his affidavit #1 the plaintiff appends some documents from other complaint proceedings involving Cst. Gallamore.
- [36] One earlier complaint appears to have resulted in a finding that Cst. Gallamore failed to behave with the courtesy due to a member of the public. It does not rise to the level of potential similar fact evidence. Nor is it relevant to the allegation that Delta knew Cst. Gallamore was likely to defame someone.
- [37] Another was a WorkSafeBC complaint and it too is lacking sufficient connection to the issues in this case to consider it producible.
- [38] The last complaint, being Office of the Police Complaint Commissioner of BC file no.: 2016-11891 and Delta file no.: D16-28, is somewhat more cogent as it stems from statements allegedly made by Cst. Gallamore that were argued to be false and slanderous.

- [39] Thus, it appears that Cst. Gallamore on at least one other occasion has been accused of making defamatory statements. That could be argued to be admissible similar fact evidence. As in T.L., the plaintiff should be permitted to investigate potential similar fact evidence. I conclude that the defendants should produce any documents in their possession, power, or control that arise from disciplinary actions, public complaints, and internal complaints through human resources about Cst. Gallamore that specifically reference defamation, slander, or libel.
- [40] Again, I remind the plaintiff that any such documents produced are subject to the implied undertaking of confidentiality. Trials are not conducted on Facebook. Any breach of the implied undertaking of confidentiality could result in a finding of contempt of court and have serious consequences for the plaintiff.
- [41] In addition, as in *F. v. A Psychiatrist* (1984), 53 B.C.L.R. 216 (S.C.), any documents produced by the defendants should be redacted to have the names and identities of complainants and witnesses deleted.
- [42] I see no sound basis for granting the order sought regarding interrogatories and that application is dismissed.

Costs

- [43] As success has been mixed, I order the parties are to bear their own costs.

"Master Muir"

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