

Court of King's Bench of Alberta

Citation: 1143979 Alberta Ltd v O'Neill, 2025 ABKB 325

Date: 20250528
Docket: 1903 15514
Registry: Edmonton

Between:

1143979 Alberta Ltd and Sean O'Neill

Plaintiffs

- and -

Robyn O'Neill, Jen Scott, Kyle Dupuis, Gregory Tillack, Jason Leasa, Derek Haight, Adam Bolten, Erin Sowers, Kory Davidsen, Brent Meyer, and the Attorney General of Canada

Defendants

**Memorandum of Decision
of
Applications Judge B.W. Summers**

Introduction

[1] In this Special Chambers application the Defendant Attorney General of Canada (“Canada”) seeks to strike parts of the Amended Amended Statement of Claim (“the Claim”) under r 3.68 on the basis that those parts of the Claim allege negligent investigation on the part of certain RCMP members, but no duty of care is owed by those RCMP members to the Plaintiffs.

The Parties

[2] The Plaintiff, Sean O’Neill (“Sean”), was married to the Defendant, Robyn O’Neill (“Robyn”). Robyn was the senior non-commissioned officer in the Fox Creek detachment of the RCMP.

[3] The Plaintiff, 1143979 Alberta Ltd (“114”), is a company owned by Sean.

[4] All of the individual Defendants are RCMP officers, except the Defendant Jen Scott (“Scott”). The action against Scott was dismissed following a summary judgment application.

[5] By and large the claims against the RCMP officers sounds in negligent investigation, although the Plaintiffs assert that the facts pleaded give rise to other causes of action.

The Claim

[6] In the Claim, the Plaintiffs assert the following (the paragraph numbers that follow are from the Amended Amended Statement of Claim):

- (a) that a physical altercation occurred between Robyn and Sean at their home and Robyn was the aggressor;
- (b) Robyn was intoxicated when she left their home, dressed in her uniform driving her police vehicle;
- (c) Sean called 911 to report that Robyn had assaulted him, while in full uniform and she was driving her police vehicle while intoxicated. Corporal Davidsen told Sean that he would look into it (**paragraph 10**);
- (d) Fox Creek detachment officers Leasa and Haight met Robyn on the side of highway 43 and in dereliction of duty did nothing to investigate Sean’s complaints. Later, Davidsen met with Robyn and in dereliction of duty also did nothing to investigate Sean’s complaints (**paragraph 11**);
- (e) Corporal Davidsen called Sean back and told him that he had investigated and Robyn was not intoxicated and had done nothing wrong, which was a dereliction of duty by Davidsen (**paragraph 12**);
- (f) The next day Sean was arrested by RCMP officers Dupuis and Tillack and they confiscated his firearms;
- (g) RCMP officer Erin Sowers of the General Investigation Section of the RCMP conducted an investigation into the matter which investigation was biased and negligent (**paragraph 16A**);
- (h) Criminal charges were laid against Sean as a result of a biased and negligent investigation designed to protect Robyn. All charges were dropped against Sean except the charge of mischief to an RCMP vehicle to which Sean pled guilty and received a conditional discharge;
- (i) Two days after the altercation Robyn went to the bank and stole \$9000.00 from 114’s bank account and transferred it to Scott who then transferred it back to Robyn;

- (j) RCMP officers Haight and Bolten attended at Sean’s residence and took his property. When Sean complained to Davidsen, a promise was first made to return it and later refused as being a “civil matter”. This was a breach of duty by Davidsen and acting with bias (**paragraph 18A**);
- (k) When Sean complained of the theft of \$9000.00 to Staff Sergeant Meyer of the Valleyview Detachment of the RCMP, the claim was dismissed as a “civil matter” which constituted a dereliction of duty, negligent investigation and a breach of his duty to the Plaintiffs as a successful prosecution would have resulted in a restitution order (**paragraph 19**).
- (l) The RCMP negligently lost his gun case and duvet covers which had been seized with Sean’s guns (**paragraph 20**);
- (m) As a result of the misconduct pleaded, the Plaintiffs suffered damages and injury that was foreseeable;
- (n) The conduct of the Defendants constituted misfeasance in public office, a flagrant abuse of their authority, was high-handed and malicious and warrants an award of aggravated and punitive damages; and
- (o) Sean’s sections 7, 8 and 9 Charter rights were breached and he is entitled to a remedy under s 24(1) of the *Charter*.

Canada’s application to strike

[7] Canada seeks to strike paragraphs 10-12, 16A, 18A 19 and 20 of the Claim, or parts of those paragraphs. The commonality to what Canada seeks to strike is the allegations that members of the RCMP breached duties owed to the Plaintiffs.

Discussion of the Law

Did the police officers owe a duty of care to the Plaintiffs?

[8] Canada provides a considerable amount of case authority that police officers do not owe a duty of care to victims of a crime to carry out an investigation and to charge a person: *Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41; *Goldman v Weinberg*, 2019 ONCA 224; *Connelly v Toronto (Police Services Board)*, 2018 ONCA 368; *Jones v The Attorney General of Canada (Royal Canadian Mounted Police) et al*, 2018 NBCA 86; *Wellington v Ontario*, 2011 ONCA 274. Rather the duty that the police owe to investigate a crime and lay a charge (if appropriate) is to the public at large.

[9] In response, counsel for the Plaintiffs makes several arguments.

[10] Firstly, counsel for the Plaintiffs cites the case of *Al-Ghamdi v Alberta*, 2017 ABQB 684 for the proposition that a court should only strike a claim under r 3.68(2)(b) if it is plain and obvious that the claim discloses no reasonable cause of action. The court must ask, assuming the facts pleaded to be true, whether there is a reasonable prospect the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim proceed to trial. The onus on the applicant is extremely high and the power to strike should only be exercised where the case is absolutely beyond doubt.

[11] With respect to assuming the pleaded facts to be true, counsel for Canada notes that does not extend to bare allegations without any factual basis: *Singh-Strzelinski v Canada*, 2021 ABQB 613. Canada says that the allegations in this case are bare, without factual basis.

[12] Secondly, counsel for the Plaintiffs says that rather than look at specific paragraphs of the Claim, the Court should read the Claim as a whole. I agree with that approach and have certainly done so. Certainly, a number of the paragraphs in the Claim do apply to all of the Defendants.

[13] Thirdly, counsel for the Plaintiffs has directed the Court to look at causes of action against individual Defendants. The Plaintiffs' analysis in that respect is set out in the following paragraphs.

Davidson, Haight and Leasa (paragraphs 10-12 of the Claim)

[14] The Plaintiffs assert that there was a dereliction of duty on the part of these Defendants in failing to demand a breath test from Robyn. The Plaintiffs assert that this was intentional on the part of these Defendants. They also assert that the charges against Sean were the result of the biased and negligent investigation with respect to Robyn.

Sowers (paragraph 16A of the Claim)

[15] The Plaintiffs say that Sowers "avoided" investigating Robyn and this was part of the negligent and biased investigation conducted by Sowers.

Davidson, Haight and Bolten (paragraph 18A of the Claim)

[16] This paragraph relates to the allegation of theft. Canada does not seek to strike that. Canada only seeks to strike the allegation in this paragraph that Davidson owed a duty to Sean and acted with bias.

Meyer (paragraph 19 of the Claim)

[17] Sean complained to Meyer regarding the theft of \$9000.00. Meyer said that this was a civil matter. The Claim alleges that Meyer committed a dereliction of duty, negligent investigation and a breach of his duty to the Plaintiffs.

[18] These arguments, made in a Supplemental Brief from counsel for the Plaintiffs, were just a repeat of assertions made in the Plaintiffs' initial brief.

[19] The Plaintiffs further assert that the named RCMP officers owed a duty to Sean because he was charged. The law is clear that police officers do owe a duty to a suspect. But the alleged duties and breaches of duties by RCMP officers in this case do not relate to the charges laid against Sean. The alleged duties and breaches relate to the RCMP officers failing to investigate and prosecute Robyn.

[20] It is my view that it is very clear that the named RCMP officers do not owe a civil duty to either of the Plaintiffs, as complainants or victims. Such a proposed duty is antithetical to the very idea that police officers owe their duties to the public and community at large. Any part of the Claim that asserts a duty on the part of the Defendant police officers to the Plaintiffs is to be struck.

[21] If there is any disagreement on the specifics of what is to be struck from the pleading, an application may be made before me in morning chambers.

Alternative Claims

[22] The Plaintiffs assert that the facts pled in the Claim support causes of action other than negligent investigation and breach of a duty of care to the Plaintiffs. Those claims include Misfeasance in Public Office, Malicious Prosecution, Conversion, Abuse of Process and breach of *Charter* Rights.

[23] Generally, I think that the Claim, as currently stated, does not support these causes of action. I invited counsel for the Plaintiffs to bring a cross application to amend the Claim, but he seemed to think that it is the Court’s responsibility to advise what amendments should be made. I disagree. If the Plaintiffs think that there exist facts to support such causes of action, it is up to them to bring an application to amend the Claim. Such an application must be supported by affidavit evidence with respect to the pertinent facts. That application must be brought before me in morning Chambers within the next 45 days. Whether or not the Plaintiffs bring a further application to amend, Canada is granted leave to bring an application to strike the Claim as against specific Defendants as disclosing no cause of action, after 45 days.

[24] Canada shall have costs of this application, under Schedule “C” of the *Rules of Court*, payable forthwith. Costs for briefs will be doubled since I asked for and received Supplemental Briefs from the respective parties.

Heard on the 3rd day of April, 2025

Dated at the City of Edmonton, Alberta this 28th day of May, 2025.

B.W. Summers
A.J.C.K.B.A.

Appearances:

Thomas M. Engel
Engel Law Office
for the Plaintiffs

Barry Benkendorf
Attorney General for Canada
Department of Justice Canada
for the Defendants, Kyle Dupuis, Gregory Tillack, Jason Leasa, Derek Haight, Adam Bolten, Erin Sowers, Kory Davidsen, Brent Meyer, and the Attorney General of Canada

Glenn Taylor (no appearance, not a party to this application)
Hayes Fry Law
For the Defendant, Robyn O’Neill