

Court of King's Bench of Alberta

Citation: Ruach v Calgary Police Service, 2025 ABKB 404

Date: 20250702
Docket: 2201 00287
Registry: Calgary

Between:

Kim Jock Ruach

Plaintiff

- and -

**Office of the Chief Constable, Calgary Police Service, Constable G. Scott and former
Constable P. Canny**

Defendants

**Reasons for Judgment
of the
Honourable Justice G.H. Poelman**

I. Introduction

[1] The plaintiff, Mr. Ruach, was pursued by officers of the Calgary Police Service (“CPS”) late in the evening of August 7, 2007, being suspected of participating in a drug transaction. In the course of this pursuit, while attempting to clear a low fence, he fell to the sidewalk and sustained injuries to his head, face and leg.

[2] Mr. Ruach seeks damages from the defendant for alleged assaults, in throwing a baton that broke his femur and then beating him while he was on the ground. These allegations are denied. (The defendant notes that under the *Police Act*, RSA 2000, c. P-17, any liability for

tortious acts of officers is borne by the chief of police: section 39(2) and (3). In this action, “the Chief” is identified as the “Office of the Chief Constable.”)

[3] The claim requires consideration of the *Limitations Act*, RSA 2000, c. L-12; and, provisionally, whether an unlawful assault has been proved.

[4] Mr. Ruach testified on his own behalf and called Nhal Wicleek as a witness. The other witnesses, Catherine Ford, Sgt. Dennis Ruygrok and Det. Gregory Mercer were called as witnesses for the defence.

II. Evidence: Documents

A. Sources

[5] At the initiative of the defendant, 72 groups of documents were entered as an agreed book of exhibits. In speaking to the matter, the parties confirmed that the documents would be considered authentic and presumptively accepted for the truth of their contents, with each party at liberty to tender contrary evidence. Mr. Ruach was familiar with the book of exhibits, as it had been provided to him well before commencement of trial.

[6] Mr. Ruach also tendered two additional documents during trial, which were entered with the agreement of the defendant.

[7] The documents in the agreed exhibits came from several sources. Documents related to Mr. Ruach’s medical treatments and consultations (including hospital records) and his involvement with government assistance programs either came directly from him or were obtained by the defendant with his consent and then given to him to include in his documentary production. CPS documents were all produced by the defendant with copies given to Mr. Ruach before trial.

B. Hearsay

[8] Both parties, to some degree, relied on hearsay statements contained in the documents. As I indicated above, the agreement on how the documents may be used addresses this, although it was only spoken to orally and briefly at the beginning of trial. In addition to this agreement, I consider the legal bases on which these records may be considered.

[9] Hearsay is an out-of-court statement (oral or written) tendered for the truth of its contents and is presumptively inadmissible because, in the absence of the declarant and the inability to cross-examine, it is often difficult to assess the statement’s truth. There are a number of exceptions to this rule, two of which are relied upon by the defendant.

[10] *First* is the “business records” exception. It originated in a case concerning nurses’ notes, where it was held that “hospital records, including nurses’ notes, made contemporaneously by someone having a personal knowledge of the matters then being recorded and under a duty to make the entry or record, should be received in evidence as *prima facie* proof of the facts stated therein”: *Ares v Venner*, 1970 Carswell Alta 80 (SCC) at para 26.

[11] The exception has been extended to business records more generally. To be admissible, a business record must be (1) an original entry, (2) made contemporaneously, (3) in the routine, (4) of business, (5) by a recorder with personal knowledge resulting from having done, observed or formulated it, (6) who had a duty to make the record and (7) who had no motive to misrepresent:

R v Monkhouse, 1987 ABCA 227 at para 23; *Rooney v GSL Chevrolet Cadillac Ltd*, 2022 ABKB 813 at para 29; and *ATCO Energy Solutions Ltd v Energy Dynamics Ltd*, 2024 ABKB 162 at para 177.

[12] The hospital records and notes from health assistance providers in various programs in which Mr. Ruach was involved are admissible under the business records exception. All of the criteria are met. Of course, it remains open for either party to challenge anything contained in these documents – which Mr. Ruach did with respect only to one entry in one document authored by a brain injury specialist with Brain Injury Assist Ltd. (exhibit 1, tab 22, page 32).

[13] The defendant relies on the business records exception, in part, for admissibility of the notes of the police officers as well. Most important are the notes of the officers involved with Mr. Ruach on August 11, 2007: Csts. G. Stott and P. Canny. Both retired before Mr. Ruach commenced his action in January 2022. Despite extensive inquiries and searches, CPS was unable to locate them.

[14] The business records exception has been applied to officers' notes – recognizing that a few hours may elapse between an occurrence and the notes. A reasonable interval does not offend the contemporaneity requirement. Police officers and nurses do not have the luxury of dropping ongoing responsibilities to immediately dictate their notes or legibly write them: *Pepler Estate v Lee*, 2019 ABQB 144 at para 129. It is a matter of determining whether the timespan between the transaction and the note raises the danger of inaccuracy by lapse of memory.

[15] In my view, all the *Monkhouse* criteria are met for the notes of Csts. Stott and Canny. The officers' first involvement began at about 11:25 p.m. on August 11, 2007. The computer-aided dispatch ("CAD") entries from the officers were made shortly after 5:00 a.m. on August 12 and contain the same descriptions as the handwritten notebooks. Thus, the interval (allowing time for Mr. Ruach to be assisted from the scene and transported to the hospital) is less than five hours – an interval short enough not to raise concerns about a lapse of memory.

[16] The duty to make the record is established by the long-standing requirement to do so at CPS, to which Det. Gregory Mercer testified. That duty is confirmed by the CPS policy on "Notebooks" in force during 2007.

[17] Likewise, I find no concern with the requirement that there be no motive to misrepresent. The notes were made well before any threat of a complaint or claim against the police. Further, it has been recognized that "complete disinterestedness is not an absolute pre-condition to admissibility": *Trang v Alberta (Director, Edmonton Remand Centre)*, 2006 ABQB 824 at para 38.

[18] The *second* hearsay exception relied upon by the defendant is the "principled exception" requiring, as a ground of admissibility, establishing necessity and reliability on a balance of probabilities: *R v Khan*, [1990] 2 S.C.R. 531; *R v Khelawon*, [2006] 2 S.C.R. 787; and *R v Bradshaw*, 2017 SCC 35. The necessity requirement is met by the fact that, despite diligent efforts, CPS has been unable to locate the retired officers.

[19] I also find that the reliability criterion is met. The handwritten notes of the two officers can be compared with each other, and are also found in the CAD event chronology. Likewise, broadly they conform to the facts contained in the paramedic's patient care record, prepared during and shortly after the event by the attending paramedic. Finally, as noted in connection

with the business records exception, the circumstances indicate that the officers' notes were prepared within a reasonable time after the incident.

[20] Thus, on the basis of both exceptions to the hearsay rule, the notes of Csts. Stott and Canny meet the test for admissibility. Whether they are accepted as true entirely, in part or not at all, is a function of weighing them in the context of all of the evidence.

III. Evidence: Witnesses

A. Kim Jock Ruach

1. Assistance from Khor Top

[21] Mr. Top is a member of the South Sudanese community in Calgary and speaks the Nuer language, Mr. Ruach's first language. With consent of defence counsel, he was granted permission to assist Mr. Ruach and act as a support person.

[22] His role was to assist in clarifying matters as necessary, which often involved discussions with Mr. Ruach. He was not an interpreter; and Mr. Ruach demonstrated his ability to listen and speak English to a limited degree. Mr. Top's involvement obviously was of great assistance to Mr. Ruach, and also to the court. I have no concern about him improperly influencing the proceedings.

2. Background

[23] Mr. Ruach was born on July 22, 1978 in South Sudan. He testified that he witnessed part of the war while living there. He left on his own for Kenya in 1993 and came to Canada in 2004, initially in Edmonton.

[24] He received no schooling before he came to Canada. Since being in Canada, his education mainly has been limited to English as a second language programs.

[25] He had employment in Brooks, on several occasions, and in Edmonton at meat processing and packing facilities. By summer 2007, he had moved to Calgary and was working at occasional jobs for a temporary agency earning in the range of nine to ten dollars per hour.

[26] Before the August 7, 2007 incident, he was involved in another incident which caused injury. On January 7, 2007 (based on hospital records), he was admitted for surgery after he was "hit in the head with a shovel." In testimony he explained, with gestures, how someone swung a shovel at him with both hands. It did not result in a loss of consciousness, but some blurring in his left eye. The hospital records described the diagnosis responsible for his stay as "facial lacerations and fractures" (exhibit 1-1, p. 2).

3. Incident

[27] As of August 7, 2007, Mr. Ruach was living at the Calgary Drop-In Centre. He had an interaction with CPS officers in the area of Centre Street and 2nd Avenue SW. He testified that he was riding his bike in the area and, because he was sweating, stopped and dismounted to calm down. He saw someone wearing a uniform (which did not seem to be a police uniform) hiding behind a tree, and then come running towards him. The person was carrying something in his right hand. Mr. Ruach was afraid and began running away.

[28] In his path, there was a metal fence three to four feet high. He put his hands on the fence to jump over but something hit him on the leg and he fell down on the other side. He believes the person chasing him threw a baton which struck him on the leg.

[29] That person then came towards him and struck him on the right and then on the left side of his head with the baton. He searched him, found \$75 in cash and put it in a plastic bag.

[30] When he fell, he saw another two officers when he was on the ground. This was after the first officer did a search.

[31] He described the uniforms, variously, all as being dark but one having a blue stripe and the other a yellow stripe. One officer wore a helmet. Someone with a blue stripe inserted an intravenous (“IV”); he does not believe it was a paramedic, because there was no ambulance in the vicinity. Further, the person inserting the IV did not speak to him. There was no female at the scene, according to his recollection.

[32] Mr. Ruach had fallen across the sidewalk – which had a surface of interlocking bricks. He does not recall any treatment, other than the IV. After that, he was unconscious. He does not think he said anything to a paramedic about running from the police.

[33] He denied consuming alcohol, prescription medication or illicit drugs on the day of the incident. Lab results from hospital records were put to him, but did not change his evidence.

[34] As he found out later, he was at Foothills Medical Centre (“FMC”) when he regained consciousness. He was discharged on August 18, at his own insistence despite hospital staff advising him he should stay. The FMC discharge summary states that “extensive discussions were held with him in the presence of Social Work and it was his informed decision to leave hospital against medical advice.” He testified that a social worker told him he should leave because it was not safe for him to be in the hospital.

[35] He agreed that his injuries were as stated in FMC records (exhibit 1-4, p. 1):

1. Left subarachnoid hemorrhage and subdural hematoma with midline shift;
2. Right femur fracture;
3. Right facial laceration; and
4. Query facial fractures specifically left lateral orbital wall fracture and right mandibular condyle fracture.

He confirmed that the last injury resulted from the January 2007 incident.

[36] He also confirmed that, as set out in his statement of claim, his description of injuries resulting from the August 7, 2007 incident were the following:

1. Head injuries;
2. Broken leg, knee and hip; and
3. Physical, emotional and psychological difficulties.

[37] On discharge, Mr. Ruach was instructed to follow up with a physician in the cast clinic, with respect to his femur fraction, and with another physician with respect to his subdural hemorrhage. Mr. Ruach confirmed that appointment cards for these follow up sessions were given to him but he did not attend at the appointments.

3. Use of Drugs and Alcohol

[38] Mr. Ruach denied having used drugs or alcohol on August 11, 2007. In particular, he denied the suggestion that he was observed to be involved in activity consistent with a drug transaction. (He maintained this position despite FMC records apparently indicating the presence of alcohol, “benzo,” and cocaine in his system.)

[39] Mr. Ruach testified that a few days after he left FMC in August 2007, he began using crack cocaine everyday. In addition to that addiction, he became a heavy alcohol abuser. In the summer and fall of 2012, he completed treatment for substance abuse at Sunrise Healing Lodge and has been sober ever since.

4. Subsequent Altercations

[40] Mr. Ruach testified about other altercations he had. In September 2008, while attending Peter Loughheed Centre (“PLC”), he complained of an assault. He described his injury as affecting his collarbone (based on his memory, later confirmed by the hospital record: exhibit 1-6, p. 3).

[41] In 2009 or 2010, he was assaulted at the Drop-In Centre. This resulted in an injury to the left side of his jaw. He was admitted to the Sheldon Chumir Centre (“CHC”), although no records are in evidence. In June 2010, he was in an altercation with another Drop-In Centre resident. This resulted in him being thrown off a bridge, causing a broken right wrist. He was admitted to FMC where he had surgery which involved the insertion of metal screws (exhibit 1-7). The altercation also caused a bruise to the left side of his face.

[42] He was again at FMC in November 2010, after being picked up unconscious at a gas station. While the cause of unconsciousness is unclear from the records, they state that Mr. Ruach “did endorse a significant binge episode of crack cocaine abuse in the few days prior to his admission”: exhibit 1-8, p. 1.

[43] He believes CPS has been interfering with him in a number of ways, including but not limited to physical assaults. At least some of the assaults by residents of institutions in which he has stayed, he believes, were instigated by police. He believes the police blocked his ability to retain a lawyer. More significantly, he alleges that two police officers were involved in three assaults on him, in 2007 (one week after his discharge from FMC), spring 2008 and summer of 2010. They would question him on why he was in a certain place; search him; and harass and insult him for being where he should not be. He did not report these incidents until much later, because he did not believe his complaints would be seriously considered. These allegations are not part of this action.

5. Progress of Symptoms, Life Skills

[44] For diagnosis of his mental and psychological difficulties, he relied upon the reverse side of his Southern Alberta Brain Injury Society card which, among other things, states he has PTSD, memory challenges, is easily confused and distracted, impulsive behaviours and impaired judgment.

[45] He began seeing Dr. Teeya Scholten, a psychologist, in 2015. She referred him to a psychiatrist, Dr. David Gibbs, who diagnosed him with PTSD and prescribed medication. He took the medication for a few years, stopping in 2017 because of side effects – primarily

constipation. Also, he wanted to study at Bow Valley College and believed the medication would interfere with his scholastic abilities.

[46] He testified to emotional difficulties, primarily involving isolation and inability to interact. He attributed this largely to difficulties he has had with “the system”: for example, he applied for AISH in August 2015, which was denied on January 28, 2016. With assistance, he appealed the decision (representing himself at the hearing). Ultimately, he was successful in being approved for AISH benefits.

[47] On several occasions Mr. Ruach was admitted to hospital pursuant to orders under the *Mental Health Act*, RSA 2000, c. M-13. This occurred in May 2020 at CHC, April to May 2021 at PLC, June 2021 at PLC; and October to November 2024 to Rockyview General Hospital (“RGH”). In the April-May 2021 case, he was released under a community treatment order requiring him to take medication.

[48] He was self-represented in challenging some of these orders. On June 30, 2022, he appeared before a panel and successfully had his community treatment order set aside.

[49] Currently, he continues to have some physical difficulties, primarily back soreness when bending, leg pain and head pain. He believes his brain injury impairs his ability to work. He has received government support and has not had paid employment since the August 11, 2007 incident. At one point in his evidence, he attributed this to interference by undercover officers.

6. Self-Advocacy

[50] Mr. Ruach’s testimony, confirmed by exhibits, is that in 2015 he attempted to obtain legal assistance after his complaints to CPS were dismissed. He stated that Det. Mercer directed him to go to the courthouse to file a statement of claim for the August 2007 incident. He spoke with duty counsel at the courthouse who told him it was too late because of when the incident happened. He spoke to a personal injury lawyer, victim services at the courthouse and the Law Information Centre.

[51] Mr. Ruach confirmed a discussion with an Alberta Health Services (“AHS”) occupational therapist on October 31, 2016. Her notes record extensive discussions about his difficulty in meeting with staff at Calgary Legal Guidance, who cancelled his appointments three times. They discussed these difficulties. He placed a call while meeting with the occupational therapist and left a message which was “very appropriate, very polite” despite his frustrations: exhibit 1-13, pp. 119-20.

[52] On a later occasion, when he attempted to file a statement of claim, he encountered difficulties with a number of individuals at the courthouse which resulted in a confrontation, attendance of a sheriff’s officer, and charges for obstruction and trespass.

[53] He believes his difficulties were racially motivated. Thus, he filed a human rights complaint against duty counsel, sometime in late 2015, with the assistance of a counsellor at the Drop-In Centre. The complaint was dismissed. He again received assistance in preparing the judicial review application, but represented himself at the judicial review hearing. His judicial review application was dismissed in court on May 7, 2018.

[54] Documents from the brain injury clinic at FMC indicate that Mr. Ruach met with one of its specialists in December, 2016. Mr. Ruach confirmed having discussions with the specialist but denied discussing his litigation case against CPS, as reported in the document.

7. Assessment

[55] There are challenges in assessing Mr. Ruach's testimony. He has difficulty with English, but was assisted effectively by Mr. Top through much of the trial. At times, he demonstrated proficiency in reading and comprehending documents put to him. For example, when being questioned about his AISH application and appeal, he could read the exhibits, explain the process and even the retroactive amounts paid to him on his successful appeal.

[56] Generally, his demeanour was earnest although combative and evasive. Often he would not answer simple questions, but replied by making other complaints, arguments, and general statements that something was wrong with the Canadian government.

[57] In some instances he denied facts that appeared to be indisputable based on the documents (employment history, conversations with various individuals giving him counseling or health advice, for example). His attribution to CPS of many of his difficulties, including finding a lawyer and employment, must be viewed as highly suspect. Likewise, often he defaulted to accusations of racism in "the system" when there are more likely explanations for his difficulties: particularly, having regard to CPS's treatment of his complaints and advice he received from duty counsel.

[58] Thus, both regarding credibility and reliability, I must use caution in relying upon Mr. Ruach's testimony.

B. Nhal Wicleek

[59] Mr. Wicleek was called as a witness by Mr. Ruach. He is a Certified Canadian Counsellor. He has a bachelor's degree in psychology, a Master of Counselling degree and is currently a doctorate candidate for a PhD in counselling and psychotherapy. For fourteen years, he has worked with the Catholic School District assessing and admitting clients in to a program; has a private practice; and has been to Africa to work with refugees at a camp in South Sudan.

[60] His speciality is PTSD related to trauma. He does not do diagnoses; he takes a diagnosis provided by a medical doctor and uses that as the basis for counselling.

[61] Mr. Wicleek was a refugee for half of his life in Ethiopia, before he came to Canada. He observed that this gives him some common experience with Mr. Ruach. However, he had no knowledge of or contact with Mr. Ruach before starting the counselling sessions.

[62] Mr. Ruach initially was referred to Komkan Africana Institute, a volunteer organization supporting the mental health needs of African clientele. Mr. Wicleek volunteers his services to Komkan, and in that capacity began seeing Mr. Ruach in October 2021.

[63] The referral letter was from Dr. Andrew Wong. It indicated that Mr. Ruach was diagnosed with PTSD due to a physical assault by police and, because of the assault, experienced significant distress and exhibited severe symptoms associated with schizophrenia.

[64] Before Mr. Wicleek commenced his work with Mr. Ruach, he noted him presenting as delusional, a condition that created mistrust and fear of the police whom he said were always following or coming after him. This forced him to be hypervigilant and unable to trust the system as he believed people supporting him were agents of police services.

[65] Mr. Wicleek noted that Mr. Ruach's symptoms were consistent with PTSD; thus, his assessment tended to confirm Dr. Wong's diagnosis.

[66] He first conducted seven counselling sessions over the period of October 17, 2021 to November 28, 2021. There was significant improvement at the end of these sessions: Mr. Ruach “was able to make progress by being able to connect with more people, participate as leader in the community, build confidence with the police, plan to visit with his family back home, plan to find a partner and plan to go back to school”: exhibit 4, February 12, 2025 report.

[67] He conducted six follow-up sessions, at intervals of three months, then six months and a year – ending about November 2022. His treatment then ended, as Mr. Ruach’s progress was confirmed.

[68] He became involved again when Mr. Ruach’s paranoia returned, resulting in his admission to RGH after presenting with delusions. Mr. Ruach’s family physician, Dr. Paige Durling, referred Mr. Ruach to Mr. Wicleek following his discharge. As of the end of November 2024, Mr. Wicleek has been counselling Mr. Ruach on a weekly basis. In addition to the counselling sessions, he advised that Mr. Ruach is on medication.

[69] Mr. Wicleek gave his evidence in a clear, straightforward and balanced manner. There is no question about his credibility or reliability.

C. Pre-Trial Questioning

[70] Mr. Ruach submitted an excerpt of his pre-trial questioning of Det. Mercer. It is as follows:

Q I’m pursuing the Police Act. Will there be anything to be done about it as long as it was given approval in the court?

A No. My understanding is, you’ve made this complaint; it has gone through PSS, Professional Standards. And because the complaint was not made soon enough after the incidents, there will be no further investigation under the Police Act into that matter.

[Page 5, ll. 3-10.]

D. Catherine Ford

[71] Ms. Ford was a paramedic with the City of Calgary in 2007. She worked for Emergency Medical Services from 2002 and gradually progressed, through experience and courses, to her emergency medical technologist designation. Her profession is governed by the Alberta College of Paramedics.

[72] She worked as a paramedic until 2013. She does not remember every call, but remembers this one. A fractured femur is very uncommon in her line of work. Some of her testimony was based on recollection, but many details required reference to the patient care record which she prepared (exhibit 1-2).

[73] The patient care record, in her handwriting, indicates that Mr. Ruach (although he was unidentified during her time with him) was running from the police; he tried to jump over a metal handrail, tripped, and fell to the ground. Her record does not disclose the source of this information, but based on her usual practice, she infers that it came from the patient. It was her standard practice to indicate if the information came from a third party, such as a witness or police officer.

[74] When she arrived, she saw Mr. Ruach being held by police; he was combative and in distress. His leg injury was quite visible to her, even though it was a closed fracture (that is, no bones protruding through the flesh). He was laying on the concrete. On examination, she and her shift partner also noted a large bleeding laceration above Mr. Ruach's right eye. She did not detect any other head injuries.

[75] Mr. Ruach was combative, trying to get up and leave. They were concerned that he might further injure himself, even fatally, particularly because of his serious leg fracture; but also because they could not rule out other injuries. Thus, they gave him a sedative by intravenous, placed him on a spine board and, to protect the area of the fracture, placed his leg in a traction splint.

[76] En route to the hospital in an ambulance, Mr. Ruach tried to pull his oxygen out and take off the traction splint. Ultimately, they used soft restraints to tie him to the stretcher to avoid further injury. At FMC, they transferred care to a trauma unit.

[77] Ms. Ford said paramedic uniforms were essentially identical to police uniforms: dark navy blue top and pants, with a crest on the shoulders (although the police and EMS crest were different). Paramedics had silver striping down the legs; police had red stripes.

[78] She does not recall any conversations with the police officers.

[79] She commented that a great amount of force is required to break a femur. She thought the femur fracture and other injuries she could observe were consistent with the description of falling while trying to jump over the fence.

[80] Ms. Ford gave her evidence in a frank, straightforward manner. She clearly indicated a distinction between what she could remember without aid and what resulted from refreshing her memory from the patient care record. There are no concerns with her credibility or reliability.

E. Sgt. Dennis Ruygrok

[81] Sgt. Ruygrok has been with CPS since 2005. In 2007, he was a constable. As of 2009, he began to specialize through training in an area known as "use of force."

[82] For the past six years, he has been the use of force review officer, which involves reviewing incidents where there has been use of force and instructing officers on use of force. Use of force involves a broad range of conduct, from minimal or no touching to touching with hands, use of equipment, and use of vehicles.

[83] He gave general testimony on the guidelines followed by CPS, including how officers should select the force option to use and the nature and use of batons.

[84] He had no involvement with Mr. Ruach and no involvement into the investigation of his complaints. Thus, his evidence has little relevance.

F. Det. Gregory Mercer

[85] Det. Mercer has been a CPS officer for nearly 26 years. He has held various roles as a constable and investigating officer. In 2014 he was a detective with Profession Standards Section ("PSS"), one of the investigators responsible for dealing with complaints and conduct issues. Presently, he works in the Human Resources Section.

[86] Investigations of officer misconduct under the *Police Act* are generally limited, by statute, to complaints involving incidents not more than one year old, or of which the complainant has been aware for not more than one year.

[87] Mr. Ruach's complaint was submitted on October 3, 2014. Det. Mercer first became aware of it in November 2014, when he attended a meeting at which he was assigned to investigate.

[88] It was recognized that there was a jurisdictional question under the *Police Act* because the complaint related to an incident on October 11, 2007. While that issue was being considered with the assistance of internal legal counsel, Det. Mercer began his investigation.

[89] The Strategic Advisory Committee identified two allegations to be investigated: one against Cst. G. Stott, for use of excessive force; and another against CPS for failure to provide adequate service under the *Police Act*. (Cst. P. Canny was retired and could not be the subject of a PSS investigation.) These two allegations were approved for investigation on November 13, 2014. The approval is reflected on an "Allegation Approval," (exhibit 1-47, p. 7). Det. Mercer emphasized that the markings under the "yes" column for the two allegations, as stated on the document, mean only that they were approved for investigation.

[90] Det. Mercer met with Mr. Ruach and interviewed him. He also attended with him at the location of the incident to ensure he had a good understanding of Mr. Ruach's allegations, to study the physical environment and look for possible CCTV coverage. He interviewed two paramedics and a social worker from FMC who had interacted with Mr. Ruach. He also reviewed medical documents provided by Mr. Ruach, and obtained his consent to request copies of additional medical information. He did not speak with Csts. Stott and Canny (because before doing so, they would need to be offered representation), but reviewed their handwritten notes and information they had inputted into the CPS database during and immediately after the incident.

[91] In the meantime, he received legal advice respecting the one-year limitation period. As a result of that, he advised Mr. Ruach by December 9, 2014 correspondence that "due to the one year time limit on complaints . . . , the Chief of the Calgary Police Service does not have jurisdiction to investigate your allegations of misconduct."

[92] However, the investigation continued under a different file, because the allegations against the officers were criminal in nature and CPS needed to consider whether criminal charges should be laid. This part of the investigation was also closed. On March 23, 2015, according to his electronic notes, Det. Mercer advised Mr. Ruach by telephone that "the complaint would be concluded without charges against the officers due to lack of evidence." Additionally, "I explained that he may seek independent legal advice for assistance." It was suggested to him in cross-examination that he advised Mr. Ruach to seek personal injury counsel, and perhaps to go to the courthouse to file a statement of claim; Det. Mercer did not recall giving this advice.

[93] Mr. Ruach was unhappy with the decision, stating that he could not understand how there could not be sufficient evidence and that his word alone should be sufficient. Det. Mercer told him that there had to be reasonable and probable grounds to believe that an offence had occurred and he did not feel he had reasonable grounds, something that was supported by a legal opinion.

[94] Det. Mercer had no further communications with Mr. Ruach until he was approached on Mr. Ruach's behalf by Dr. Teeya Scholten, a psychologist who took on an advocacy role.

Complaints were made about assaults by two other officers of CPS in downtown Calgary: summer 2007, spring 2008, and summer 2010.

[95] CPS personnel spoke with Dr. Scholten, Khor Top (a volunteer Nuer translator), Nhial Wicleek (another Nuer translator), and Mr. Ruach. Mr. Wicleek helped create a composite drawing of one of the police officers.

[96] After much investigation into records of police officers who worked downtown, and looking at their photographs, no likely suspects were identified.

[97] Thus, by January 28, 2018 correspondence, Det. Mercer advised Mr. Ruach that “we did not find anyone in the Calgary Police Service who looked like the police officer you told us about. We cannot do anything more.” (He worked with Dr. Scholten to prepare the letter in a way that would be understandable to Mr. Ruach.)

[98] During the course of his testimony, Det. Mercer identified CPS’s 2007 policy on police notebooks. Based on that, and his own experience, he explained that officers were required to keep a notebook; required to keep daily notes; and expected to make notes during their duties. He also described the retention policy for the notebooks, which in 2007 were all in paper form.

[99] Det. Mercer gave his testimony in a straightforward, fair manner. He was careful to indicate when he did not recall or was unsure of something. He respectfully answered Mr. Ruach’s cross-examination questions, to the best of his ability. There are no concerns about his reliability and credibility.

IV. Limitations Defence

[100] The defendant’s primary defence is that Mr. Ruach’s action should be dismissed as having been commenced too late. The incident for which Mr. Ruach claims a remedy occurred on August 11, 2007; the statement of claim was filed on January 10, 2022.

[101] Section 3(1) of the *Limitations Act* provides that, subject to certain inapplicable exceptions, on pleading the *Act* a defendant is entitled to immunity from a claim if a remedial order is not sought within (a) two years of when the claimant knew or ought to have known of an injury attributable to the conduct of the defendant that warranted bringing a proceeding or (b), at latest, ten years after the claim arose. On its face, Mr. Ruach’s claim is out of time.

[102] He can escape the consequences of section 3 if section 5 applies. It states that “the operation of the limitation periods . . . is suspended during any period of time that the claimant is a person under disability.” A “person under disability” is defined as “an adult who is unable to make reasonable judgments in respective matters relating to a claim”: section 1(h)(ii). (The definition also includes represented adults under the *Adult Guardianship and Trusteeship Act*, SA 2008, c A-4.2 and persons for whom a certificate of incapacity is in effect, neither of which is applicable here.) Mr. Ruach has the onus of establishing that the limitation period was suspended by virtue of a disability: section 5(2).

[103] A number of cases have established the governing legal principles. “Disability” within the meaning of section 5 of the *Act* means more than injured or unwell; there is a distinction between being unable to work and unable to make reasonable decisions regarding a claim; and receipt of government payments does not necessarily prove inability to make reasonable judgments: *Tchir v King*, 2021 ABQB 393 at para 13, citing other authorities. In general, to have

the advantage of a suspended limitation period a claimant must establish his condition “deprived him of the ability to assess his circumstances, formulate a course of action and pursue that course of action, including a course of action that involved legal proceedings”: *Champagne v Sidorsky*, 2017 ABQB 557 at para 79.

[104] Typically expert evidence is needed to address the question of disability under the *Act*. There must be a qualified expert (such as psychologist or psychiatrist) and a review of relevant medical and life history: *AF v Alberta*, 2020 ABQB 268 at para 123.

[105] In this case the question is not whether Mr. Ruach ever had a disability within the meaning of the statute. Rather, it is whether he had one that extended more than two years before he sued on January 10, 2022.

[106] There is evidence about Mr. Ruach’s general abilities to make reasonable judgments, such as living independently and looking after his own affairs. I note as well that by the fall of 2012, Mr. Ruach had overcome his drug and alcohol addictions and was living a sober life. Most probative, however, is the evidence directly showing his consideration of seeking remedies against CPS for many years before he filed his statement of claim.

[107] Important examples are the following taken from a draft affidavit prepared by Mr. Ruach, with the assistance of Dr. Scholten, his testimony, and notes of the professionals interacting with him:

- a) On March 23, 2015, he discussed with Det. Mercer CPS’s decision not to file criminal charges, and was advised by Det. Mercer to file a civil claim.
- b) On June 24, 2015, he met with duty counsel at the courthouse who persuaded him not to file a claim.
- c) On November 17, 2015, he discussed with an occupational therapist his allegation about the police, the fact that he had had two years to make a claim, and his interaction with duty counsel that led to charges.
- d) November 30, 2015, meeting notes of an occupational therapist indicate that Mr. Ruach was trying to obtain a lawyer through Legal Aid.
- e) On April 11, 2016, Mr. Ruach had discussions with a social worker about his allegations, and the issue of the two year limitation period.
- f) On October 31, 2016, an occupational therapist noted that Mr. Ruach was emotional due to not being able to meet with Calgary Legal Guidance; that a number of appointments were made that were cancelled.
- g) On December 13, 2016, meeting notes by a case manager at the FMC Brain Injury Clinic indicate that Mr. Ruach was asking about legal assistance and reported that he had called a personal injury lawyer but had not heard back.
- h) On December 14, 2016, he spoke with a social worker seeking help with his legal concerns but was advised that they could not assist him with these issues.
- i) During December 2016, he requested the Brain Injury Assist Ltd program to assist him in his litigation case against CPS regarding a 2007 incident.

[108] All of these communications were acknowledged as accurate by Mr. Ruach in his testimony, except for the last one. Further, they are part of the evidence before me as exceptions to the hearsay rule. I give them considerable weight for the reasons they met the threshold test and because they tend to corroborate each other. I also give significant weight to the December 2016 attendance at the Brain Injury Assist Ltd. Program (the reported conversations of which were denied by Mr. Ruach), even though not necessary to establish the point. The record of notes are internally coherent and plausible, meet the test for business records and are consistent with Mr. Ruach's statement to others which he acknowledges. Mr. Ruach's brief, unexplained denial, carries no weight with me.

[109] These communications show that he was able to assess the fact that he had a claim against CPS and knew how to pursue it, well before January 10, 2020 (two years before his statement of claim was filed). His difficulty was not one of being unable to "make reasonable judgments in respect of matters relating to a claim" (*Act*, section 1(h)); rather, it was his difficulty in getting the assistance he believed he needed to file a claim. I make no finding on who was responsible for that difficulty.

[110] More generally, on several occasions he demonstrated his ability to pursue claims as a self-represented party. Thus, he prosecuted his own human rights complaint and his application for AISH benefits and successful appeal when the initial decision was adverse.

[111] In these circumstances, the absence of a supporting expert opinion makes little difference. Even so, it is noteworthy that Mr. Wicleek, his counsellor, referred only to conditions such as PTSD and possible schizophrenia.

[112] Reference should, however, be made to a June 8, 2022 letter "to whom it may concern" by Dr. Andrew S. Wong, which states as follows:

This letter is to certify that Kim has a permanent and severe disability due to his medical condition. This has led to his delay in filing a complaint about the police, and he may need extra support if available.

Dr. Wong was not called as a witness. The letter is not a proper expert report, as required by the *Alberta Rules of Court*. Further, an April 17, 2024 order required that plaintiff expert reports must be served six months before start of trial.

[113] More substantively, Dr. Wong's letter does not speak to the period of disability or its cause. Further, it does not explain what is meant by "permanent and severe disability," and how that might relate to the definition in the *Act*.

[114] Thus, in my view, Mr. Ruach has failed to establish that before two years prior to filing his statement of claim, he had a disability that made him unable to make reasonable judgments in respect of the matters relating to a claim. Thus, the defendant is entitled to immunity from Mr. Ruach's claim and his action is dismissed.

[115] Next, I will turn to a provisional consideration of other aspects of the action.

V. Whether the August 7, 2007 Incident was a Tort

[116] There are two versions of what happened on August 7, 2007. Mr. Ruach says he was minding his own business when a uniformed man ran towards him, carrying something in his right hand. This made him afraid and caused him to run away. He attempted to jump a fence and

was struck with an object thrown toward him (he thinks a baton) which broke his leg. While on the ground, he was struck with a baton on the head and surrounded by three uniformed persons, one of whom administered an IV.

[117] The police version (based on hearsay evidence from officers' notes) is different. Cst. Stott's notes report as follows:

. . . [O]bserved a drug transaction . . . , myself and my partner Canny

Went to apprehend [Offender] tried to leave on a bicycle but fell off his bike. He then ran S/B Attempted to jump over a metal railing. He slipped and fell onto the ground The offender then tried to get up and started to reach for his pockets. I then quickly grabbed my baton and held him down by the head and held his [right] hand.

As the offender fell I also noted that he struck his head on the ground and heard a thud. . . . I had to hold him down forcing him to stay still until EMS arrived. It was unknown how he broke his femur.

[118] Cst. Canny's notes state, in part, as follows:

Witnessed a drug deal

Attempted to flee from the scene on a bike.

I yelled stop police.

Failed to stop and attempted to flee. . . . fell off bike [at] rails.

Attempted to jump red rail

Lost footing flopped over railing. Unknown whether or not lost footing or tripped.

. . . struck head on bricks – sound heard when head struck. Male had dropped drugs as he ran.

[119] In determining what weight to give these versions of the incident, I note several things. The evidence of Ms. Ford, one of the attending paramedics, corroborates the officers' version. She did not testify as a qualified expert but I can consider her views on the degree of force required to fracture a femur. Her statement was based on observations as to the fracture and her work experience as a paramedic. (See *R v Iliina*, 2003 MBCA 20, at paras 72-85; *R v Jenkins*, 2018 ONSC 1165, at para 28.) Thus, her testimony falls within the lay opinion exception to the rule excluding opinion evidence: *R v Lee*, 2010 ABCA 1 at paras 30-33. *R v Gavin*, 2018 PECA 6, at paras 42-45; and *R v Macdonald*, 2021 BCSC 371 at paras 99-103.

[120] Another corroborating feature of her testimony is her statement of how the injury occurred. In her patient care record, she said:

[Patient] was running from the police when he tried to jump over a metal handrail, tripped, fell to ground. [Patient] was obviously injured

[121] She testified that her standard practice in completing patient care records was to indicate if information came from anyone other than the patient. Thus, in this case, she believes she was given the information about how the injury occurred from Mr. Ruach, not one of the officers.

[122] Mr. Ruach's credibility also is called into question by his insistence that he had consumed no drugs or alcohol. FMC records indicate the presence of alcohol, "benzo," and cocaine in his system.

[123] Also, there are problems with the internal plausibility of Mr. Ruach's version. It is unlikely that an officer chasing him would throw a baton to stop him just before a low railing, if, as Mr. Ruach testified, there were two other officers close by on the other side.

[124] Mr. Ruach's evidence does not satisfy me, on a balance of probabilities, that he was unlawfully assaulted by the throwing of a baton and then beaten on the head with a baton after he fell. I prefer the evidence of the officers. It is worthy of significant weight, primarily for the same reasons it met the threshold test for admissibility. The notes of both officers are consistent. They were made very shortly after the events, with no motive for untruthfulness. They are consistent with the observations of the paramedic.

[125] I further accept Ms. Ford's testimony that she was the one who administered the IV and she did so for Mr. Ruach's own protection. If he were allowed to stand and attempt to leave, he would be at great risk of further injury or even death.

[126] I recognize the weaknesses associated with hearsay evidence, which I have taken from the notes of the officers. In this case, there are no grounds to question the reliability of the officers' recorded observations.

[127] As the defendant concedes, even on the officers' version of events they applied force to Mr. Ruach by holding him down until EMS arrived. However, they were holding him for his own protection because of a serious leg fracture. Thus, their acts fall within section 25 of the *Criminal Code*, R.S.C. 1985, c. C-46, s. 25, which provides justification when using as much force as is necessary for a purpose authorized in the administration or enforcement of the law.

[128] As part of this analysis, no adverse inference can be drawn from the defendant's failure to call the officers as witnesses. Mr. Ruach was given notice under rule 8.15 of the *Alberta Rules of Court* more than one month before the trial was scheduled to start. Just as importantly, the defendant has satisfied me that reasonable efforts were made to contact the officers to secure their attendance but they could not be located.

[129] It remains to address a point Mr. Ruach repeatedly made throughout the trial. The CPS records include an "Allegation Approval," which states that "after interviewing the complainant and clarifying the allegations to be addressed during this investigation, the following allegations will be investigated: . . ." There follows the allegations made of unlawful or unnecessary exercise of authority and failure to provide adequate service, both of which had beside them a check in the "yes" column rather than the "no" column.

[130] Mr. Ruach asserts that this document is an acknowledgement by CPS that his allegations were accepted as true. The plain words of the document refute this assertion. It states merely that the "allegations will be investigated."

[131] The results of the investigation were that it would be closed with no action against the officers both because of the one-year limitation period for complaints and the evidence did not support criminal charges.

[132] For all of these reasons, I conclude that even if the defence under the *Limitations Act* did not apply, Mr. Ruach has failed to prove on a balance of probabilities that he was unlawfully assaulted by CPS officers and thus the action must be dismissed on that basis.

VI. Concluding Remarks

[133] For the reasons given above, I dismiss Mr. Ruach's claim against the defendant because the defendant is entitled to immunity under the *Limitations Act*. In addition, Mr. Ruach has failed to prove on a balance of probabilities that he was unlawfully assaulted by CPS officers.

[134] I have not made a provisional damages assessment. It is unnecessary because I have concluded the claim must be dismissed on two grounds relating to liability. Further, on the evidence before me, I could not make a meaningful assessment of damages.

[135] The parties may schedule a further appearance before me if necessary, to address matters arising from this judgment, including costs.

Heard on the 10th to 14th and 17th days of March, 2025.

Dated at the City of Calgary, Alberta this 2nd day of July, 2025.

G.H. Poelman
J.C.K.B.A.

Appearances:

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Self-Represented Litigant

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