

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Girouard v. Smith*,  
2025 BCSC 2161

Date: 20251103  
Docket: S100244  
Registry: Kelowna

Between:

**Michael Girouard**

Plaintiff

And

**Stuart Smith**

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraph [104] on  
November 5, 2025

Before: The Honourable Justice Hardwick

## Reasons for Judgment

Counsel for the Plaintiff:

W.T. Clarke

Appearing in Person:

S. Smith

Place and Dates of Trial:

Kelowna, B.C.  
September 18 and 25, 2025

Place and Date of Judgment:

Kelowna, B.C.  
November 3, 2025

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**Introduction**

[1] Quotes from *The Shining*, *The Terminator* and *Crocodile Dundee* do not typically form part of the evidentiary record in a British Columbia Supreme Court trial. Not only do those famous movie quotes form part of the record herein, but they also formed a material role in my understanding the unique factual matrix underlying this proceeding (the “Action”).

**Overview of the Parties**

[2] The plaintiff, Michael Girouard, has at most material times relevant to the Action been an employee of the District of Peachland (“the District” or “Peachland”). He is currently 66 years of age.

[3] From in or about 2008 through to 2019, Mr. Girouard’s primary employment was as the District’s building inspector. He was also a bylaw enforcement officer for the District. After retiring in 2019 for approximately 3.5 years, personal circumstances necessitated his return to the workforce. Since in or about 2023, Mr. Girouard has again been the District’s building inspector and, in addition, is now also its plumbing inspector. Although he remains qualified to do so, Mr. Girouard no longer works as a bylaw enforcement officer.

[4] Mr. Girouard presents, based upon my observations at trial, with somewhat of a conflict adverse personality.

[5] The defendant, Stuart Smith, is a long-time resident of Peachland. He owns a residential property located within the District. Mr. Smith is currently 79 years of age.

[6] In contrast to Mr. Girouard, Mr. Smith presents, based on my observations at trial, with a strong personality and a very broad vocabulary.

[7] For important context, at all times material to the Action, the population of the District has been in the range of approximately 5,000 individuals. It is not the exact population that matters, but rather the fact that Peachland is a small community which

has a proportionately small number of key municipal employees. Mr. Girouard was (and now is again) one of those key employees.

[8] Another key District employee was Else Lemke. Ms. Lemke was employed as the District’s Chief Administrative Officer (“CAO”) from 2006 to 2019. Ms. Lemke was the only other witness at the trial of the Action apart from Mr. Girouard and Mr. Smith.

**Overview of the Facts**

[9] Dating back to sometime in or about 2009, Mr. Smith had what I conclude were *bona fide* grounds to make complaints to the District about a deck and a retaining wall that his neighbour in Peachland had constructed. The exact merits of the complaints are again not relevant to the Action except that I accept they were *bona fide* and that it was objectively understandable for Mr. Smith to be somewhat agitated about the situation.

[10] The District did acknowledge and respond to Mr. Smith’s complaints.

[11] The District employee primarily responsible for addressing Mr. Smith’s complaints was Mr. Girouard.

[12] Within a day or two of receiving the original complaint, Mr. Girouard met with Mr. Smith at Mr. Smith’s residence in Peachland to investigate and obtain further information. Mr. Girouard described Mr. Smith as “upset” and “excited” but also indicated that he “kind of understood why”. From Mr. Girouard’s perspective, “they got along okay” at that point.

[13] Mr. Girouard admitted that the timeline for the District’s response to the bylaw complaint issues with Mr. Smith’s neighbour was prolonged. Mr. Girouard provided some explanation for this but, in the result, he readily conceded that the bylaw issues raised by Mr. Smith remained outstanding for several years.

[14] During this intervening time, Mr. Smith grew increasingly impatient and the relationship between Mr. Girouard and Mr. Smith deteriorated markedly.

[15] Ultimately, what followed from Mr. Smith’s original complaints was a series of events that occurred primarily in 2012, the details of which I explore in detail below, which led to Mr. Girouard commencing the Action against Mr. Smith in August 2013. For reasons I will also detail, this matter did not come on for trial until some 12 years later.

**The Action**

[16] The notice of civil claim commencing the Action, filed on August 9, 2013 (the “NOCC”), pleads the tort of nuisance and seeks the following injunctive relief:

- a) an order restraining Mr. Smith from contacting Mr. Girouard, in any manner, except for purposes of business related to the District and only in writing to the Chief Administrative Officer, until the trial or other disposition of the Action or until further order of the court;
- b) an order restraining Mr. Smith from attending within 100 meters of the following places of employment of Mr. Girouard, namely: the District’s office, the Council Chambers and the Peachland Public Works Yard (the addresses of which are detailed); and
- c) an order restraining Mr. Smith from attending within 100 meters of “the residence” (which address is not detailed as Mr. Girouard did not “wish to disclose [his] home address for fear of reprisals against him by Mr. Smith”).

[17] There is also a claim in the NOCC for general damages, together with interest pursuant to the *Court Order Interest Act*, and a claim for costs.

[18] On October 2, 2013, Mr. Smith filed a response to civil claim. Whilst admitting attending at the District’s office and District council meetings to raise concerns, Mr. Smith expressly denied any erratic or threatening behaviour, either directly or indirectly, when communicating with Mr. Girouard. Mr. Smith opposed all the relief sought in the NOCC.

[19] The pleadings were never amended by either party and stood the same on September 18, 2025, when the matter first came on for trial, as they did back in 2013.

[20] Helpfully, however, examinations for discovery were conducted in this Action in a quite timely way.

[21] Specifically, on May 23, 2014, Mr. Smith was examined for discovery by Mr. Girouard's counsel, Mr. Clarke. On the same day, Mr. Girouard was examined for discovery by former counsel for Mr. Smith.

[22] Both parties made use of the transcripts from those examinations for discovery, Mr. Smith particularly so. The substantive use of those transcripts necessarily factors into my overall analysis of the evidence. However, from a procedural perspective, I acknowledge that I exercised my judicial discretion to allow both parties to rely upon copies of transcripts as opposed to tendering an original as is normally required under the *Supreme Court Civil Rules* [Rules]. I did so because I accept that the court reporter passed away during the intervening time between the discoveries and trial such that originals could no longer be secured despite appropriate inquiries being made. There is no prejudice given that both parties were in the same position, and I am satisfied that I have complete official copies of both transcripts.

[23] After the examination for discoveries, nothing occurred in the Action whatsoever except for the filing of several notices of intention to proceed in 2021 and 2022 prior to a case planning conference in May of 2025 (the "CPC"). The notice of trial was filed by Mr. Girouard in accordance with the case plan order made at the CPC.

[24] By coincidence, I presided over the trial management conference in the Action conducted on July 31, 2025 (the "TMC"). During the TMC, counsel for Mr. Girouard stated on the record and on a "with prejudice" basis that Mr. Girouard was no longer seeking any injunctive relief as against Mr. Smith and was willing to discontinue the Action if there was agreement that the parties would bear their own costs. Mr. Smith was quite adamant that he would not agree to such an arrangement and wanted the trial to proceed.

[25] The matter was appropriately confirmed on the assize list and was ultimately scheduled before me.

[26] In his opening statement on behalf of Mr. Girouard, his counsel submitted that he was “leaving it out there for judicial discretion” as to whether to grant the injunctive relief sought if the trial proceeded but stated again that the option remained for everyone to simply walk away “without recourse” with matters being entirely withdrawn. However, if the trial proceeded counsel advised that Mr. Girouard would be seeking “double costs or special costs”.

[27] Mr. Smith confirmed to the court that he wished to proceed with the trial.

**Banning of Mr. Smith From the District’s Office**

[28] Moving well back in the chronology, on or about January 8, 2013, some approximately eight months prior to the commencement of the Action, Ms. Lemke, in her capacity as the CAO, decided to ban Mr. Smith from personally attending at the District’s Office or having in-person contact with any District employees (the “Ban”).

[29] Ms. Lemke’s decision to issue the Ban was not based exclusively on interactions involving Mr. Smith and Mr. Girouard.

[30] Ms. Lemke testified in some detail that she had also received multiple complaints from other District staff concerning Mr. Smith and that the District had previously implemented certain security protocols specifically due to concerns raised by District staff about Mr. Smith’s conduct. While some of Ms. Lemke’s evidence about these staff complaints constitutes hearsay, since she did not personally witness all that occurred, Ms. Lemke has firsthand knowledge of what actions were taken by the District based on these staff reports.

[31] In this regard, Ms. Lemke also testified that she observed what she considered to be some off-putting behaviour from Mr. Smith while attending “committee of the whole” meetings. Most significantly, Ms. Lemke observed Mr. Smith wearing black leather gloves (even in summer weather) and frequently placing his gloved hand in his chest pocket in a manner which she perceived to be potentially consistent with concealing a weapon. No actual weapon was ever observed but Mr. Smith’s conduct in this regard, I accept, occurred on enough occasions that it fairly caught the attention of Ms. Lemke.

[32] After making the decision to issue the Ban, Ms. Lemke wrote a letter to Mr. Smith in this regard dated January 8, 2013, which stated, *inter alia*:

I appreciate that you have concerns about certain decisions made by the District and you have the right to express those concerns. However, the manner in which you have dealt with staff has been inappropriate and has had a negative impact on staff. Therefore, from this date forward you must direct all questions and concerns about the District to me, in writing, by email, fax or mail. You are no longer permitted to attend at District Hall, as well you must not approach any District employee in public or contact them at their homes. ...

...

If you do attend at District Hall or approach a District employee, we will be immediately contacting the RCMP.

[33] Mr. Smith acknowledges receiving the January 8, 2013 correspondence from Ms. Lemke informing him of the Ban.

[34] The Ban was subsequently ratified by the District's elected council, as it then existed, on January 22, 2013 (the "Resolution").

[35] Whilst given notice of the Ban, Mr. Smith was not given formal notice of the Resolution.

[36] Perhaps because of the failure to be formally notified of the Resolution, Mr. Smith did not initiate judicial review proceedings under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, as he had standing to do in respect of the Resolution.

[37] Mr. Smith did, however, subsequently make a complaint to the Office of the Ombudsperson.

[38] As a result of the complaint to the Ombudsperson, the Ban remained in place and quite specific parameters were put into place for Mr. Smith to seek have the Ban lifted.

[39] These requirements are all specified in a letter from Ms. Lemke to Mr. Smith dated January 21, 2014, which letter was sent to Mr. Smith via registered mail such that his receipt of same was confirmed.

[40] In addition to providing Mr. Girouard with a written apology, two of the requirements for seeking to lift the Ban outlined in the January 21, 2014 correspondence were that:

- a) the legal proceedings underway between Mr. Smith and Mr. Girouard to obtain a “restraining order” be completed and a judgment rendered; and
- b) Mr. Smith comply with any orders issued as a result of the above legal proceedings.

[41] Quite obviously neither of the two above specifically identified requirements have been satisfied and so the Ban remains in place as of the current date. Nor did Mr. Smith ever seek to revisit the terms of lifting the Ban with the District whilst the Action was dormant for many years.

#### **Related Criminal Proceeding**

[42] While not given formal notice of the Resolution, Mr. Smith was very clearly aware of the Ban. As noted, he admits this.

[43] For a time, however, Mr. Smith was of the mistaken belief that Ms. Lemke did not have the authority to issue the Ban, notwithstanding the involvement of the Ombudsperson’s office which confirmed she did.

[44] Accordingly, after the date of the Ban, Mr. Smith attended at the District’s Office on several occasions. All these attendances were in relation to his ongoing complaints about the bylaw issues concerning his neighbour and the District’s response (or lack thereof) regarding those complaints. Each time he attended at the District’s Office, the police were contacted, as Mr. Smith had warned would be the case in the January 21, 2014 correspondence from Ms. Lemke. Nothing became of the police involvement on those occasions.

[45] On June 17, 2017, Mr. Smith again attended at the District’s Office. On this day, Mr. Smith attended ostensibly to pay his property taxes. In clear anticipation of there being an issue with his attendance given the Ban, Mr. Smith brought with him a small

tape recorder, which he apparently activated. After refusing to leave the District's Office after being asked, the reception clerk called the police. It took some time for the police to attend and during that time Mr. Smith remained in the District's Office. Operations at the District's Office were halted during this time and emotions were clearly running high, but nothing occurred apart from the fact that some of the District's staff felt anxious while waiting for the police to arrive.

[46] Mr. Smith was arrested by the police on that date for causing a disturbance, after exiting the District's Office, but was never charged with such an offence. Rather, after being released on a promise to appear, Mr. Smith was charged, pursuant to an information sworn on September 26, 2017, with the specific offence of interrupting the use of the District's office contrary to s. 430(4) of the *Criminal Code* [Code] (the "Information"). For context, s. 430 of the *Code* is the offence of "Mischief". It was alleged that Mr. Smith wilfully obstructed, interrupted or interfered with the lawful use, enjoyment or operation of the District's Office (also referred to as District Hall): see s. 430(1)(c) of the *Code*.

[47] The trial proceeded in the Provincial Court of British Columbia before the Honorable Judge R.R. Smith on June 4 and 5, 2018 (the "Criminal Proceeding"). In a 14-page decision released on June 14, 2018, Mr. Smith was acquitted of the single count on the Information. In acquitting Mr. Smith, Judge R.R. Smith stated as follows:

[34] There is often a fine line between what is seen as lawful freedom of expression protesting, which is *Charter* protected, and unlawful disruptive, threatening or criminal conduct. The *Bracken* case in Ontario turned on the finding of fact that the conduct of Mr. Bracken outside of the public building was all within lawful protesting. The activities of Mr. Breeden inside the public buildings in British Columbia, was found to have gone too far, such that it was an unlawful disruption of the public services provided at the courthouse, municipal hall and fire station.

[35] The conduct of the accused, in the case at bar, was often confrontational and loud, but he took it to another level in December 2012 when he expressed his displeasure with the building inspector by delivering to him the ace of spaces card. It was not unreasonable for that action to be taken as a veiled threat to the building inspector, who worked in that very building, given the multiple confrontations between them. For example, on November 26, 2012 the accused had met with both the building inspector and the CAO at District Hall and within seconds of the start of that meeting, the accused got up and shouted at the building inspector in an aggressive manner. This was then followed up by the late

December 2012 ace of spades incident at District Hall. Whether the accused ever intended to carry out any threat is not relevant to the matter being decided by the court today. With the veiled threat being given, I find that the CAO did have the authority on January 8, 2013 to ban the accused from attending District Hall. She is the person in authority for the building, having authority to impose workplace safety directions.

[36] The CAO serves under the direction of the District Council. She quite properly took the matter to District Counsel for an in-camera ratification resolution. That resolution should have been sent to the accused, but it was not. Yet even with him not being notified of the District Counsel ratifying resolution, the accused knew he was not to attend the District Hall. If he chose to attend, he could potentially be arrested and charged under the *Tresspass Act* with the offence of trespassing.

[37] To sustain a criminal charge of public mischief by interrupting the lawful use of the property, there needs to be something about his conduct on June 27, 2017 causing such a disruption, beyond his mere presence, which is the essence of a trespassing charge. In find the Crown has not sufficiently proven, beyond a reasonable doubt, any such disruptive conduct of the accused beyond his mere presence at District Hall. He was never charged with trespass.

[39] The accused needs to clearly understand that the CAO did have authority to ban him from attending at District Hall and he now has notice that District Counsel has ratified that decision by way of a passed resolution. His attendance there, even if he is polite with that attendance, could result in his being arrested for and conceited of trespass. Furthermore, if there are any future veiled threats, he could potentially be charged for making such a criminal threat.

[40] The Crown has not proved the offence beyond a reasonable doubt. The charge is dismissed. The accused is admonished to pay particular attention to paragraph 38 of this decision so that he does not misunderstand that the acquittal in this case does not mean he has unfettered right to attend at District Hall and it could be a potential offence under the *Tresspass Act* should he choose to do so.

[48] Mr. Smith has heeded Judge R.R. Smith's warning about trespass and has not attended at the District's Office since the conclusion of the Criminal Proceeding. Whether Mr. Smith has fully heeded Judge R.R. Smith's warning about making veiled threats is a little less clear given certain comments he made during the trial.

[49] In referencing the Criminal Proceedings, I expressly recognize that I am finding the facts based upon the evidence which was before me in this trial. The Criminal Proceedings simply form an important part of the underlying narrative, particularly as to why the Action laid dormant for so long. Moreover, the practical reality is that many of the key facts in the Action are not contested; the real issue for the court is what to do legally based on those facts.

## Credibility and Reliability

### The Law

[50] In *Mand v. Cheema*, 2025 BCSC 1595, Justice Blake provided what I consider a very succinct summary of the law regarding credibility and reliability in a challenging case where credibility factored centrally in the determination of the issues before the court. I am going to adopt the relevant portions of that summary that are applicable in the Action:

[113] I am conscious of the principles set out in the leading authorities concerning the manner in which a trial judge should assess credibility and reliability, including: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 [Youyi], appeal dismissed 2020 BCCA 130; *Bradshaw v. Stenner*, 2010 BCSC 1398 [Bradshaw], aff'd 2012 BCCA 296, leave to appeal ref'd [2012] S.C.C.A. No. 392; and *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.).

[114] The determination of the credibility and reliability of a witness requires the trial judge to make an assessment of their evidence. It is not an all or nothing proposition, and I may ultimately decide to accept some, all, or none of a witness' evidence. I may attach different weight to different parts of that evidence: *Radacina v. Aquino*, 2020 BCSC 1143 at para. 96. A credibility assessment requires the trial judge to consider the trustworthiness of a witness' testimony, based upon the sincerity of a witness and the accuracy of their evidence. A lack of credibility may be found as a result of a determination that a witness has made a conscious decision not to tell the truth, or for some other reason they are unable to provide an honest account of historic events. A lack of reliability may be found as a result of the conclusion that their evidence is not accurate. Credibility relates to the honesty of the witness, while reliability relates to the accuracy of their evidence, which engages a consideration of their ability to accurately observe, recall and recount the events in issue. A witness who is not credible cannot give reliable evidence, whereas a credible witness may give unreliable evidence. Credibility is not a proxy for reliability: *R. v. H.C.*, 2009 ONCA 56 at para. 41.

[115] A useful methodology to the assessment of credibility was articulated at paras. 186–187 of *Bradshaw*. First, I am to consider the testimony of a witness on a “stand alone” basis, followed by an analysis of whether their story is inherently believable. If their evidence has survived relatively intact, then I must evaluate their evidence based upon its consistency with other witnesses and documentary evidence, and the testimony of non-party, disinterested witnesses, which may provide a reliable yardstick for comparison. Finally, I must determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

...

[119] In *Youyi*, Justice Mayer (as he then was) set out a helpful summary of additional factors which may impact credibility: at para. 92. I find the following are relevant in this matter:

- a) a series of inconsistencies, when considered in their totality, may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' testimony;
- b) credibility will be undermined when a party has failed to produce documents;
- c) credibility will be in doubt when a witness' explanation defies business logic or common sense; and
- d) credibility may be impacted when a witness is evasive, longwinded and argumentative in their responses to questions.

[Emphasis added.]

### **Analysis**

[51] Ms. Lemke satisfies all the hallmarks of a credible witness. She was, I find, sincere and accurate in her evidence and her version of events is inherently believable. Ms. Lemke could not be exactly precise about some dates but given the amount of time that has passed since the material events relative to the Action that is understandable. Further, Ms. Lemke was candid in this regard and did not definitively state a date that was objectively inaccurate. Simply stated, I accept Ms. Lemke accurately remembered what happened, just not always exactly when it happened.

[52] Like Ms. Lemke, Mr. Girouard was also imprecise with dates, but to a greater degree. This was notable given that Mr. Girouard is the plaintiff whereas Ms. Lemke is a third-party witness who would not, in my view, perhaps consider it as important to retain material information relevant to this litigation.

[53] Mr. Girouard was also not entirely responsive to questions put to him on cross-examination and exhibited overt frustration at times. I attribute this primarily to the way Mr. Smith conducted his cross examination. However, I did not observe this demeanour as noticeably in Ms. Lemke, who was also subject to the same style of cross-examination, albeit for a shorter duration.

[54] Notwithstanding my above comments, Mr. Girouard was, on balance, a satisfactory witness. Most significantly, I find Mr. Girouard's evidence about all the key

events relevant to the litigation to be credible. In this regard, it is important to appreciate that there were various key portions of Mr. Girouard's evidence and Mr. Smith's evidence that objectively align, albeit with very different subjective perceptions. It is where their objective evidence differed that I conclude that Mr. Girouard's evidence is inherently believable and Mr. Smith's is not.

[55] Continuing in that regard, assessing the credibility of Mr. Smith is an interesting exercise. In certain respects, Mr. Smith was an extremely candid witness. He not only made various admissions that were contrary to his interests, on occasion he gratuitously expanded upon them. He also very willingly engaged with the court and my specific questioning of him, given that he did not come necessarily prepared to conduct his own direct examination (which I appreciate is difficult for some self-represented individuals and counsel for Mr. Girouard did not object to the court's intervention in the circumstances). Perhaps because of his usual candidness, Mr. Smith is very poor in telling untruths. Not only were a few portions of Mr. Smith's evidence inherently unbelievable, on occasion his evidence verged on preposterous. Accordingly, I generally accept Mr. Smith's evidence except where it conflicts with the evidence of Ms. Lemke and/or Mr. Girouard.

### **Material Events in 2012 and 2013**

[56] As I indicated above, Mr. Smith was unsatisfied with the timeliness of the District's response to his bylaw complaints. In at least one telephone conversation, I accept that Mr. Smith's impatience and frustration resulted in him cursing at Mr. Girouard. Mr. Girouard testified that it was generally the District's policy to simply terminate the phone call because while cursing is not an appropriate form of communication in the circumstances, it is far from uncommon.

[57] Despite some escalation in tensions, Mr. Girouard continued to engage with Mr. Smith about his bylaw complaints, including in person. On one such occasion in or about 2012, Mr. Girouard, Mr. Smith and the District's (then) director of the planning had a meeting in the boardroom located at the District's Office. Given that two of the

individuals present share the same surname of Smith, I am simply going to refer to the other individual as the “Director”.

[58] During a portion of this meeting, the Director had to step away for a period and Mr. Girouard and Mr. Smith were alone in the boardroom. Prior to stepping away, the Director had made a general reference to “grey areas” in life. In the Director’s absence, Mr. Smith told Mr. Girouard a story involving him [Mr. Smith] being previously resident at a construction camp which had rules about possessing a hunting knife so that instead of carrying a hunting knife, he [Mr. Smith] would carry a fishing knife.

[59] Mr. Girouard candidly admits there was no actual verbal threat made by Mr. Smith and nothing to suggest Mr. Smith was carrying a knife but testified he subjectively felt the rather random story was intended to create some fear in him that Mr. Smith was carrying a knife.

[60] Mr. Smith’s meandering denial of this interaction under cross examination was not credible. How Mr. Girouard subjectively perceived Mr. Smith’s comments might differ from how an objective person might perceive those comments. It is plausible that Mr. Smith was simply awkwardly making conversation while he and Mr. Girouard were sitting idly waiting for the Director to return. I fully accept, however, that this conversation did happen in substantially the manner that Mr. Girouard described and is not a fabrication.

[61] In any event, despite the above peculiar interaction, Mr. Girouard again continued to have personal interactions with Mr. Smith and specifically participated in a planned meeting between Mr. Smith, Ms. Lemke and himself in Ms. Lemke’s office situated within the District Office. This meeting I find, despite my above comments regarding the witnesses’ ability to recall precise dates, occurred on November 26, 2012. This date is specifically referenced in written correspondence from Mr. Girouard to Mr. Smith dated December 20, 2012. While that correspondence is not generally admissible for the truth of its contents, it very clearly addresses the specific meeting in question, which, at minimum, confirms that the meeting had occurred prior to that

correspondence being sent and no evidence was led that the correspondence incorrectly identifies the date of the meeting.

[62] Returning to the meeting itself, very shortly after Ms. Lemke, Mr. Girouard and Mr. Smith were seated in Ms. Lemke's personal office, Mr. Smith removed an item from the breast pocket of his coat. Mr. Girouard and Ms. Lemke both believed the item appeared to be a recording device. Neither could specifically confirm it was a recording device but were unshaken in their evidence that "the package" (as Mr. Smith referred to it at times during cross-examination) appeared to be such a device.

[63] According to both Ms. Lemke and Mr. Girouard, Ms. Lemke advised Mr. Smith that if he was going to record the meeting, the District would also need to record the meeting and that the meeting would need to be rescheduled to accommodate this.

[64] Mr. Smith became very upset as a result and, I accept, stood up from the table in Ms. Lemke's office and started communicating in a tone of voice that would be objectively perceived as yelling or shouting. Mr. Smith also, I accept, pointed at Mr. Girouard and called him a "liar" at least once with this same tone of voice. Mr. Smith admits to making that specific statement—namely calling Mr. Girouard a liar—on a single time on that occasion.

[65] Further, just prior to departing the District's Office, Mr. Smith said in clear earshot of Ms. Lemke, "I'm a hunter gatherer and right now I am gathering". Mr. Girouard, who was farther away because Ms. Lemke had placed herself between the two men to deescalate the situation, only heard Mr. Smith use the word "hunter".

[66] Mr. Smith, for his part, admitted under cross-examination that he made the statement that "I am a hunter gather and right now I am gathering" at the District's office, but was ultimately unable to recall when he said that. In this regard, I accept the evidence of Mr. Lemke as she had a distinct recollection of where Mr. Smith was situated when he made the statement and the context in which it was made. Mr. Girouard, who was candid in admitting he did not personally hear all of what was said, heard a key word of that statement which corroborates Ms. Lemke's recollection.

[67] The events of November 26, 2012 now bring me to a portion of Mr. Smith's evidence that I consider to be preposterous.

[68] After specifically advising Mr. Smith, whilst he was already under affirmation, that I was prepared to accept that he was upset about his neighbour, that he did not think how it was being handled by the District was right and that it was taking forever, I asked him to provide his version of events when he came to the District's office and interacted with District staff. In response, Mr. Smith testified as follows in direct examination:

A I was getting snowed. Simple as that. Some -- and the interactions that I had with Ms. Lemke, there was only the one. And that was in the office with the tape recorder incident, which is a fictional event, because I never did have a tape recorder. They never seen a tape recorder so, it's irrelevant what they were saying about it. I activated something that I never had. I don't know. And --

THE COURT: Sorry, you activated something that you never had?

A No, they said that I activated something that I never had.

THE COURT: So, you say there was nothing in your hand?

A No, there was, but it wasn't a tape recorder or recording device. And it was wrapped up so nobody would know. It's still sitting in my drawer. It's two Aero bars around a silver paper.

THE COURT: Like chocolate bars?

A Yah, I think they call them Aero bars. They're about this long. You can --

THE COURT: You kept chocolate bars from 13 years ago?

A Well, they just -- there's a lot of stuff I keep. Some people might say I'm a hoarder. Did you notice?

[69] Even if I were to accept that Mr. Smith felt it necessary to bring a snack to this meeting at the District's Office, it defies any possible air of reality that Mr. Smith:

- a) took the time to remove two chocolate bars from their original packaging and place them in silver paper (Mr. Smith subsequently referred to it as tin foil in cross-examination);
- b) simply happened to remove these two silver-wrapped chocolate bars out of his coat pocket at the very outset of the meeting when all three attendees had just sat down to commence discussions and held them in his hand, not placing them on the table;

- c) did not make any effort to assuage the errant “misperception” that his silver-wrapped chocolate bars were not, in fact, a recording device; and
- d) has kept these two particular Aero bars wrapped in silver paper over the last 13 years in his desk drawer.

[70] Returning to the November 26, 2012 meeting, Ms. Lemke was clear in her evidence that she did not say Mr. Smith could not record the meeting. Rather, given that this had not been discussed in advance, Ms. Lemke’s position was that it was necessary to postpone the meeting so that the District could arrange for its own separate recording. Even if Ms. Lemke was possibly in error in taking that position, Mr. Smith’s response in causing a ruckus at the District Office’s and making express allegations of dishonesty directed at Mr. Girouard—namely calling him a “liar”—in his place of work was wholly inappropriate.

[71] With respect to referring to Mr. Girouard as a “liar”, Mr. Smith made very clear at trial that this continues to be his view of Mr. Girouard. Twice during the trial in referencing this aborted meeting, Mr. Smith testified that, “if it walks like a duck and it quacks like a duck, it’s probably a duck”. On cross-examination, Mr. Smith explained that reference in somewhat more detail and maintained that Mr. Girouard lies about “pretty much anything”.

[72] Ultimately Mr. Smith did leave the District’s Offices on November 26, 2012, very shortly after the aborted meeting. I am not placing any significant weight on the issue of whether he was specifically “walked out” or “ushered out” of the building by Ms. Lemke or whether he walked out voluntarily with Ms. Lemke walking in close proximity after placing herself in between Mr. Smith and Mr. Girouard. I think this is a question of subjective perspective of the involved parties. No one testified that Ms. Lemke had to physically escort Mr. Smith out of the District’s offices, nor do I think that could even have been physically possible given Ms. Lemke’s quite petite stature. Ms. Lemke did, however, as noted, consider it necessary to situate herself between Mr. Girouard and Mr. Smith intentionally to deescalate the situation.

[73] In the latter portion of December 2012, approximately three weeks after the aborted meeting in Ms. Lemke’s office, Mr. Girouard was away from work on holiday. During his absence, Mr. Smith attended at the District’s Office and asked the staff member at the reception desk if Mr. Girouard was present. When Mr. Smith was advised that Mr. Girouard was not, Mr. Smith handed an “Ace of Spades” card to the District employee and told her to “Give it to Mike for the New Year” or words very close to that effect. Mr. Smith admitted this on direct examination. The District staff member immediately provided the “Ace of Spades” card to Ms. Lemke who, in turn, contacted the RCMP. The RCMP declined to get involved at that time on the basis it was a civil matter.

[74] Of some import, Mr. Smith did not just deliver an ordinary playing card to the District’s Office to be directed to Mr. G’s attention. Mr. Smith admits he went to the specific effort of personally creating the “Ace of Spades” card, with the assistance from his “housekeeper” (an individual with whom he admitted to living with for approximately 30 years but with whom he denied ever being in a spousal-like relationship with). It is somewhat larger an ordinary playing card and is double sided.

[75] Despite his admissions, Mr. Smith denies that that a reasonable person would conclude that the “Ace of Spades” is associated with being the “death card”. In another of his more curious answers, Mr. Smith testified as follows when I questioned him about the “Ace of Cards” incident:

I don’t think the Court of Justice system relies on tarot cards and playing cards.  
And I guess Themis would be shaking in her grave right now.

[76] In cross-examination on this point, Mr. Smith admitted that the “Ace of Spades” card “could be a lot of things”. He then went on to explain that it was, among those many things, sometimes known a “Spadille” and that Florence La Badie was on the ace of spades card historically but has since been removed. Mr. Clarke and Mr. Smith then had the following exchange:

Q And at the discovery, you knew that the ace of spades card also included the meaning of the death card, did you not?

- A I don't remember it being the death card. It was never my intent to imply that it was the death card. If somebody wants to think that it is, --
- Q Okay.
- A -- I've got no control over their brains. The only reason I picked this was that it looked kind of fancy. It could have been a diamond. It could have been a heart. It could have been anything else. But this one is more fancy.

[77] This is another portion of Mr. Smith's testimony that I find preposterous. Given the level of discord between Mr. Smith and Mr. Girouard by December of 2012— Mr. Smith having admitted to yelling at Mr. Smith that he was a "liar" at the November 26, 2012 meeting—there is no air of reality that Mr. Smith decided to take the time to make Mr. Girouard a playing card, hand deliver it to the District's Office and simply chose the "Ace of Spades" because it was "more fancy".

[78] Finally, after the commencement of the Action, at a date which Mr. Girouard believed to be in or about September 2013 but which he very specifically recalled to be at or about 4:17 in the afternoon, Mr. Girouard was driving down Highway 97 departing Peachland after finishing work to return to his residence when he observed a truck in his rearview mirror that that he recognized as belonging to Mr. Smith.

[79] Suspecting that Mr. Smith might be following him, Mr. Girouard turned off Highway 97 and drove around the block to see if Mr. Smith was "engaging". According to Mr. Girouard, Mr. Smith turned off at the same intersection before returning to Highway 97.

[80] Regarding this event, Mr. Smith focused significantly on the portion of Mr. Girouard's evidence regarding the distance from which he indicated he first spotted Mr. Smith's truck—some 75 feet. While that is very fair line of questioning, Mr. Smith undermined the significance of this considerably by gratuitously correcting Mr. Girouard to advise that his older model Chevrolet pickup truck is not "forest green" as Mr. Girouard had previously testified but, in fact, is "meadow green". The obvious inference from this being that Mr. Girouard's evidence that he was able to identify Mr. Smith's vehicle from a distance—whatever that precise distance might have been—is more far more believable than if, for example, he testified that Mr. Smith had been

driving a black Toyota sedan. Indeed, Mr. Smith testified himself that his truck is “like seeing a Lamborghini. You don’t see them every other car”.

[81] When I specifically questioned Mr. Smith on the very point of whether he had made any efforts to ascertain where Mr. Girouard lived, he testified that “District employees do not put their phone numbers or addresses in the phone book”. That was, as apparent, not actually a direct answer to my question. He then volunteered that a former neighbour of his [namely of Mr. Smith] had moved to West Kelowna and was now a neighbour of Mr. Girouard. That neighbour apparently gratuitously advised Mr. Smith about where Mr. Girouard resides. Although in cross-examination Mr. Smith did expressly deny ever attempting to find out where Mr. Girouard resides, the overall exchange on this topic gives the court some concern.

[82] Ultimately, Peachland is a small community, as I have already noted. It is very plausible that Mr. Girouard and Mr. Smith were both heading in the same direction on the Highway 97 on that date and at that time. Mr. Girouard’s evidence that when he turned off Highway 97 Mr. Smith also turned at the same intersection would certainly suggest it is possible that Mr. Smith was following him on purpose. However, I am not satisfied on a balance of probabilities that Mr. Smith was intentionally following Mr. Girouard. In reaching that conclusion, I am not suggesting that Mr. Girouard fabricated his evidence about this incident. I simply have concluded, given this was a one-off occasion and not a repetitive pattern of behaviour even on Mr. Girouard’s own evidence, it is equally likely that it was merely a coincidence which Mr. Girouard subjectively believed involved Mr. Smith following him in an effort to determine the location of his personal residence.

### **Additional Evidence From Trial**

[83] Throughout the course of the trial, there was some additional evidence received by the court which merits some mention for context.

[84] Mr. Smith was cross-examined by Mr. Clarke on the topic of “veiled threats”. The exchange proceeded as follows:

- Q But you don't have to have crystal clear facts to be threatened. You've heard of a veiled threat, have you not?
- A Well, it's not in the *Criminal Code*.
- Q Yes. Believe it or not, we're not here regarding a criminal charge.
- A It's not in the *Criminal Code*.
- Q Yeah. No, it's not. So let's take that whole *Criminal Code* thing. Let's take a bamboo pole and put it on a pate and spin it over here. You've heard of a veiled threat, haven't you?
- A I've heard of a lot of things, yes. Veild threats as well.
- Q Okay. What's a veiled threat to you?
- A I could not even imagine what a veiled threat would be. It's either a threat or it's not a threat.
- Q Could not even imagine what a veiled threat would be. So, when we're outside on break, where you're asking about the parking lot and just where the judges come in. Then you said upon the roof that you could have a sniper that could take out a judge going into the parking lot, that was just common fun conversation?
- A It was just conversation.
- Q Okay, so does that sound creepy to you at all?
- A No.
- Q No? Not at all?
- A It was a Canadian Forces guy that had the longest sniper kill.
- Q Okay, so talking about a guy standing on the museum aiming at a judge in their car coming out of the garage doesn't sound kind of creepy to you?
- A No.

[85] As a self-represented individual, I queried Mr. Smith about the above discussion of snipers after the conclusion of cross-examination to permit him the right of reply and to perhaps give the court some very necessary context. Apart from confirming that Mr. Clarke actively engaged with him in this conversation, which Mr. Clarke acknowledged to the court was accurate, Mr. Smith's evidence did not materially change. He did, whilst the court was stood down during a routine break, initiate a conversation involving snipers, site lines and the judge's parkade at the Kelowna Courthouse.

[86] Continuing in cross-examination, Mr. Clarke asked Mr. Smith a very broad question about an “Uzi gun” and how it could be utilized. That resulted in the following exchange:

- A You’ve never heard the expression gone postal?
- Q Very much so.
- A Yeah. I haven’t in the States.
- Q Used to be the thing to do back in the ‘80s. Now what did you bring this up for? Why are we talking about going postal and Uzis and other such things?
- A Well, apparently they’re paranoid about people asking questions, down there.
- Q Down where?
- A In the cabal. The municipal office.
- Q In the district of Peachland office?
- A Yes.
- Q You called it the cabal?
- A. The cabal, oh, yes.
- ...
- Q Okay. So, I’m just going to call -- as much as I really want to call the district of Peachland a cabal and reinforce that, I’m just going to call it the district. You can refer to the cabal. So, in this instance, you’re down at the cabal, being the district. And what? How does an Uzi come up?
- A Well, it just came up.
- Q You’re chatting with Polly Palmer [phonetic].
- A Polly Palmer.
- Q And she’s in charge of corporate services.
- A And I said, ‘What are you afraid of? Somebody could walk in with an Uzi and spray everybody. And the relevance of this would be what?’
- Q Exactly. Man, you just got my next question.
- A Well, there you go.
- Q What would be the relevance of saying that?
- A It was just off the top of the head on the spirit of the moment.

[87] Mr. Smith also admitted during cross examination to “possibly” referring to himself as being part of the “mafia” or “mafiaso” at the District’s Office. This occurred in the context of the following exchange:

- Q But by the same token, you're also mimicking yet another violent move called The Terminator, Arnold Schwarzenegger, because that's where the phrase, 'I'll be back' comes from, correct?
- A That's true.
- Q Okay. Thank you. As well, you referred to yourself as something like being of the mafia, mafioso or mafiosi at the district office, correct?
- A Possibly.
- Q Okay. And why on earth -- because I'm here to let you talk, sir. What would be the concept -- sorry, the context behind you saying you're part of the mafia or mafioso? What possibly could you be trying to do by saying that?
- A Nothing comes to mind.
- Q So its just a passing comment?
- A True enough. Yes.
- ...
- Q Exactly. So, I'm going to give you another big opportunity here like I did with my almost very first question. Take all these passing comments together, 'Spray everybody with an Uzi,' 'Part of the mafioso,' 'I'll be back,' references to the movie The Shining, and we haven't even got to the Ace of Spades card yet. But even up to that point, is it possible now that you've heard all of this -- and your answers and questions, is it possible that somebody objectively standing back not involved could go, 'You know what? This gentleman is giving a little bit of concern. This is sounding creepy.' Is that possible?
- A Anything's possible.
- Q Ok, so that is objectively possible, correct.
- A It is possible. That's all.

[88] In this regard, Mr. Smith is very firmly of the belief that if Mr. Girouard legitimately believed that Mr. Smith might harm him, a reasonable person would not have returned to working for the District after his stint of retirement. He maintains this belief notwithstanding Mr. Girouard's unchallenged evidence that he returned after his initial stint of retirement by necessity due to personal circumstances. This line of questioning involved a rather prolonged exchange between Mr. Smith and Mr. Clarke during cross-examination about Mr. Girouard moving to "Tuktoyaktuk" or, alternatively, "Pembroke".

[89] At the conclusion of his cross-examination, it was put to Mr. Smith by Mr. Clarke that the totality of his conduct relevant to the Action was "reckless". Mr. Smith took that one step farther and queried Mr. Clarke if he was being asked if he was behaving with

“gay abandon”. Ultimately, after some discourse, Mr. Smith refused to make the admission that a reasonable person would draw the conclusion that, taken cumulatively, his conduct was reckless.

### **Injunctive Relief**

[90] Although counsel for Mr. Girouard indicated he was “leaving it out there for judicial discretion” regarding the injunctive relief sought in the Action, that request must be based upon the pleadings as presently framed.

[91] I am not satisfied, without the necessity of even outlining the relevant legal principles for the granting of injunctive relief, that there is currently any evidentiary basis for the relief sought in the NOCC. The last alleged material event occurred in 2013.

[92] Moreover, even somewhat generously departing from the four corners of the pleadings momentarily, it is not disputed that Mr. Smith has not attended at the District’s Office (or either of the other identified addresses in the NOCC) since the conclusion of the Criminal Proceedings. That alone is a period of more than six years.

[93] Further, although a claim for damages was included in the NOCC, there was no attempt to pursue this relief at trial.

[94] Notwithstanding my above conclusion, considering a few statements made by Mr. Smith during the trial, I do suggest Mr. Smith review para. 38 of Judge R.R. Smith’s reasons for judgment and continue to abide by them.

[95] The trial of the Action occurred at the insistence of Mr. Smith, and these reasons for judgment are not intended to inflame past grievances. They are delivered by necessity to ensure that this Court fulfills its obligation to provide access to justice and to uphold the rule of law. Further, my findings of fact refer, in detail, to the specific evidence given at trial. In this regard, I have intentionally outlined in detail the key evidence received at trial upon which I relied to draw my necessary conclusions as the trier of fact.

### Costs

[96] Despite concluding that there is no basis for injunctive relief at the time of the trial, the unique circumstances of the Action require me to consider for the purposes of costs whether there was a basis for injunctive relief previously. Based on the evidence received at trial, I conclude there was a *bona fide* claim at the time the Action was commenced.

[97] Certain conduct of Mr. Smith prior the delivery of the “Ace of Spades” was inappropriate, as I have addressed, but would not likely have met the threshold for injunctive relief. The premeditated decision to prepare the “Ace of Spades” card and personally deliver it to the District’s Office to the attention of Mr. Girouard would, I find, constitute a veiled threat in the eyes of an objective person. Further, the veiled threat was received entirely because of Mr. Girouard simply fulfilling his responsibilities as an employee of the District. Individuals are entitled to feel safe and secure while performing their job duties and there is a line between being required to respectfully deal with difficult persons and being the subject of veiled or actual threats. The delivery of the “Ace of Spades” crossed that line.

[98] Given that I found that there a *bona fide* basis for commencing the Action, I do not consider it necessary for Mr. Girouard to file a notice of discontinuance and incur liability for Mr. Smith’s costs of the Action to the date of the notice in accordance with Rule 9-8(4) of the *Rules*. Rather, what was appropriate was for the Action to be discontinued with the parties bearing their own costs—exactly what counsel for Mr. Girouard proposed at the TMC and again at the outset of the trial.

[99] In these circumstances, I am satisfied that Mr. Girouard is entitled to his costs of the Action pursuant to R. 14-1 on the basis that he was the substantially successful party, even though I did not actually grant the injunctive relief sought. Alternatively, I consider it appropriate to “otherwise order”, as I have the judicial discretion to do, that Mr. Girouard is entitled to his costs of the Action.

[100] This necessitates me to consider the appropriate scale of costs under R. 14-1(a).

[101] I am not satisfied that there is a basis for ordering special costs as submitted on behalf of Mr. Girouard.

[102] Special costs may be awarded when a party has engaged in reprehensible conduct during the course of the litigation: see *Garcia v. Crestbrook Forest Industries Ltd.*, (1994), 9 B.C.L.R. (3d) 242 (C.A.), 1994 CanLII 2570 (BCCA).

[103] Despite my credibility findings regarding several aspects of Mr. Smith's evidence, there was nothing in Mr. Smith conduct during the course of the Action that, in my view, reaches the threshold of reprehensible conduct. That is a high threshold, and it is to be reserved for conduct genuinely worthy of judicial rebuke.

[104] In the circumstances, I conclude that Mr. Girouard shall be entitled to his costs of the Action in accordance with Appendix B at Scale B on the basis that it was a matter of ordinary difficulty.

“Hardwick J.”