

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CECIL ROSARIO

PLAINTIFF

AND:

**CONSTABLE CHRIS GLADNEY,
and THE CITY OF RICHMOND**

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE RALPH

Counsel for the Plaintiff: Paul Kent-Snowsell

Counsel for the Defendant,
City of Richmond: David Butcher

Place and Date of Hearing: New Westminster, B.C.
April 9, 1998

1. Introduction

[1] Two applications were heard in this action in which the plaintiff sues a constable in the Richmond detachment of the R.C.M.P. and the City of Richmond. The allegations are that on

August 8, 1997, a police dog under Constable Gladney's control, attacked and injured the plaintiff near the scene of a motor vehicle accident and that Constable Gladney wrongfully arrested the plaintiff.

[2] The plaintiff applied to add the Attorney General of British Columbia as a party on the basis that the Attorney General may be vicariously liable under s. 11(1) of the **Police Act**, R.S.B.C. 1996 c. 367 for any wrong-doing of Constable Gladney. The plaintiff's application is granted and the Writ of Summons and Statement of Claim will be amended in the form proposed by the plaintiff in Exhibit "C" of the Affidavit of counsel for the plaintiff filed in the application.

[3] In the second application, the City of Richmond applied under Rule 18A for an Order dismissing the action as against the City. At the heart of the application is the issue of whether at law the City could be vicariously liable for the wrongdoing of Constable Gladney, even if the alleged wrong-doing is proven.

[4] The application calls for an examination of a number of statutes and policing agreements that govern policing arrangements in British Columbia. The starting point however, is with the vicarious liability of a police constable's employer at common law. That position is succinctly stated by Southin J.A. in **Hodgkin v. Port Alberni (City)** (1996), 23 B.C.L.R. (3d) 234 at p. 249:

The obvious purposes of ss. 11 and 21 of the Police Act were, respectively, to overcome the common law rule that the employer of a police constable is not vicariously liable for the acts of that constable (see *Attorney General for New South Wales v. Perpetual Trustee Co.*, [1955] 1 All E.R. 846 (P.C.)...

[5] As it relates to R.C.M.P. officers in British Columbia, the common law position has been overcome by both the **Crown Liability and Proceedings Act**, R.S.C. 1985, c. C-50 (renamed 1990, c.8, s.21) and the **Police Act**, R.S.B.C. 1996, c. 367. Federal Crown liability is provided for in sections 3 and 36 of the **Crown Liability and Proceedings Act**. The liability of the provincial Crown and of municipalities is provided for in sections 11, 20 and 21 of the **Police Act**.

2. The Police Act

[6] The policing scheme in British Columbia is provided for in the **Police Act**. Section 5 continues a "provincial police force". Section 14(1) permits the Minister responsible to enter into an agreement with the Government of Canada to authorize the R.C.M.P. "to carry out powers and duties of the provincial police force specified in the agreement." Section 14(2) provides that if an agreement is entered into, the R.C.M.P. is "subject to the agreement", deemed to be a provincial police force and its members deemed to be provincial constables.

[7] Section 3(2) requires a municipality with a population of more than 5,000 persons to provide policing by choosing one of

three options. The two relevant options for this application are to establish a "municipal police force" or to enter an agreement with the Minister responsible for policing to use the provincial police force. The City of Richmond chose to enter an agreement with the Minister to have its policing provided by the R.C.M.P. That agreement was entered into as of April 1, 1992.

3. The Policing Agreements

[8] In April 1992 the province also entered into two agreements with the Government of Canada to have the R.C.M.P. provide policing services in British Columbia. The first agreement known as the Provincial Police Service Agreement deals with the provision of police services in non-municipal areas and municipal areas with populations of fewer than 5,000. In my view that agreement is not relevant to this application.

[9] The second agreement known as the Municipal Policing Agreement is similar to the Provincial Police Service Agreement but provides for the R.C.M.P. to constitute a provincial police force that will be used by municipalities of a certain size to police those municipalities should they choose that option under s. 3(2) of the **Police Act**. The agreement is made in contemplation of further agreements between the province and some of its municipalities.

[10] The following are some relevant clauses in the Municipal Policing Agreement:

ARTICLE 1.0 INTERPRETATION

- 1.1 n) "Municipal Police Service" is defined as "...the aggregate of resources and [RCMP] Members employed by Canada to provide police services to all the Municipalities listed in the Annex to this Agreement, but does not include ...
 - v) any policing services provided under the Provincial Police Service Agreement."

- p) "Municipal Police Unit" is defined as "...the portion of the Municipal Police Service assigned by Canada to provide the police services for that Municipality."

ARTICLE 2.0 SUBJECT MATTER

- 2.1 a) Canada shall, subject to and in accordance with the terms and conditions of this Agreement, provide and maintain a Municipal Police Unit within each of the Municipalities listed in Annex "A" during the term of this Agreement.
 - b) Canada is hereby authorized by the Province to carry out the powers and duties of the provincial police force for the purpose of providing each Municipal Police Unit in accordance with this Agreement.
 - c) The number of personnel set out opposite each of the Municipalities listed in Annex "A", as adjusted from time to time in accordance with Article 5, are all the Members in the Municipal Police Unit for that Municipality.

- 2.2 The Province is liable for any obligation in this Agreement that purports to be an obligation of any Municipality; the discharge of any obligation of the province by the Municipality shall operate as a discharge of the Province.

ARTICLE 3.0 MANAGEMENT OF THE MUNICIPAL POLICE SERVICES

- 3.1 a) The internal management of each of the Municipal Police Services, including its

administration and the determination and application of professional police procedures, shall remain under the control of Canada.

- b) The minimum standard of policing in each Municipal Police Unit shall meet the standard as determined by the Commissioner in consultation with the Minister.
- c) The level of policing service by each Municipal Police Unit shall meet the level as determined by the Minister and Chief Executive Officer in consultation with the Commissioner.

ARTICLE 4.0 DIRECTION AND REPORTING

- 4.1 For the purposes of this Agreement, the Commanding Officer shall act under the direction of the Minister in aiding the administration of justice in the Province and in carrying into effect the laws in force therein.
- 4.2 It is recognized that, pursuant to the Provincial Policing Service Agreement, the Commanding Officer shall implement the objectives, priorities and goals as determined by the Minister for policing in the Province.
- 4.3 The Chief Executive Officer may set objectives, priorities and goals for the Municipal Police Unit that are not inconsistent with those of the Minister for other components of the provincial police service.

ARTICLE 9.0 BASIS OF PAYMENT

- 9.9 a) In the event that any Member employed in any Municipal Police Unit receives the benefit of any statutory defence such as that provided by the Police Act (British Columbia) to any claim or action and in connection therewith the Province may be or may become liable for any of the payments contemplated by subparagraph 9.3(c)(iii), Canada shall indemnify and hold harmless the Province with respect to any such claims or actions; Canada shall assume the conduct and the carriage of any proceeding relating to such claim.

- b) The Province shall promptly notify Canada of any claim or action referred to in paragraph (a).
- c) If the Province should compromise or settle any such claim or action without the consent of Canada, Canada shall not be liable to indemnify or save harmless the Province.

(Subparagraph 9.3(c)(iii) referred to in (a) above provides that the cost of each Municipal Police Unit shall not include the costs of any civil action, compensation claim, ex gratia payment or claim for legal fees.)

[11] In the April 1, 1992 Municipal Police Unit Agreement between the province and the City of Richmond, Article 3 deals with the "subject matter" of the agreement. It recognizes that Canada will provide and maintain a Municipal Police Unit within the municipality, "being part of the provincial police force, to act as the Municipal Police Force in the Municipality in accordance with this Agreement."

[12] Article 4 deals with the management of the Municipal Police Service and recognizes that the internal management of the Municipal Police Service remains under the control of Canada.

[13] Article 10 deals with the "Basis of Payment". Article 10.3(c)(iii) provides that the cost of the Municipal Police Unit shall not include "the costs of any civil action, compensation claim, ex gratia payment, or claim for legal fees."

[14] Article 10.9 provides:

- a) The Municipality acknowledges that, under the Municipal Policing Agreement for British Columbia, Canada has agreed to indemnify and hold harmless the Province where any Member employed in the Municipal Police Unit receives the benefit of any statutory defence, such as that provided by the Police Act (British Columbia), to any claim or action and in connection therewith the Province may be or may become liable for any of the payments such as those contemplated by subparagraph 10.3(c)(iii), and in such event Canada shall assume the conduct and carriage of any proceeding relating to such claim.
- b) The Municipality shall promptly notify the Province of any claim or action referred to in paragraph (a) and, upon request, the Municipality shall provide all reasonable assistance to the Province, Canada or the Force with respect to any such claim or action.
- c) The Municipality shall not compromise or settle any such claim or action without the consent of the Province.

[15] Article 2.1(c) also provides that "the Municipality is liable for any obligation in this agreement, which is an obligation of the Province pursuant to the Municipal Policing Agreement for British Columbia."

3. The plaintiff's submissions

[16] The plaintiff notes that s. 14(2) of the **Police Act** provides that if an agreement is entered into to create the R.C.M.P. as a provincial police force, then the R.C.M.P. is deemed to be a provincial force and its members deemed to be provincial constables subject to the agreement. (Emphasis added). The plaintiff argues that the creation of a Municipal Policing

Agreement distinct from the Provincial Police Service Agreement has in effect provided for a municipal police force. It follows that the agreement between the province and the City of Richmond providing for a Municipal Policing Unit, makes that unit in Richmond a "Municipal Police Force" notwithstanding the definition in s. 1 of the **Police Act** which defines "Municipal Police Force" as a force established under s. 26 of the **Police Act**. The plaintiff argues that the section 1 definition is not exhaustive.

[17] The plaintiff further argues that Article 2.1(c) of the agreement between the Province and the City of Richmond shifts liability from the Province to the Municipality.

[18] The plaintiff argues further that Article 10.3(c)(iii) of the Agreement between the Province and the City of Richmond excludes from the costs of the agreement "the costs of any civil action, compensated claim, ex gratia payment or claim for legal fees." He says that this provision would be unnecessary if it was intended that there should be no liability pursuant to the **Police Act** upon the City for the torts of R.C.M.P. constables engaged as municipal constables pursuant to the Agreement.

[19] By extension from the submission that the agreement between the Province and the City of Richmond creates a Municipal Police Force, it is argued that the members of that police unit are

"Municipal Constables" for which the city has vicarious liability under s. 20(1) of the **Police Act**.

4. The position of the defendant municipality

[20] The defendant argues that the policing services that a municipality is required to provide can only be provided by establishing a municipal force, contracting with the provincial police force, or contracting with another municipal force. A municipality can be liable only for the torts of "Municipal Constables" and Municipal Constables can only be appointed when a municipal force is established. Richmond has not established a municipal force.

[21] The defendant constable as a member serving in a municipal police unit contracted between the province and Richmond is a provincial constable, not a municipal constable. The defendant therefore argues that absent specific statutory authorization, there is no municipal liability for the torts of any police officer. Because there is no statutory provision making the City of Richmond vicariously liable for provincial constables it follows that Richmond is not properly a defendant in this case and the action should be dismissed as against it.

5. Analysis

[22] Under s. 3 of the **Police Act**, municipalities with populations of more than 5,000 persons are given three options for providing policing. Where a municipality opts for an

agreement with the minister responsible for policing to provide police services through the provincial police force, that force does not become a "municipal police force" either under the **Police Act** or by virtue of the agreement entered into between the provincial government and the government of Canada. I note that in s. 3(1)(c) of the **Police Act** the contract referred to there contemplates that the provincial police force will act as the municipal police force. (Emphasis added). In my view, the phrase "act as" indicates that the provincial police force stands in place of or performs the role of a municipal police force but remains distinct from a municipal police force in a number of ways. The particular requirements of a municipal police force are set out in sections 23-29 of the **Police Act**.

[23] While the plaintiff has also argued that Article 2.1 of the agreement between the province and the City of Richmond makes that municipality liable for any obligation which is an obligation of the province under the Municipal Policing Agreement for British Columbia, it is to be emphasized that those are obligations under the agreement and not obligations under the **Police Act**. The vicarious liability of the province is imposed in the **Police Act** and not in the Municipal Policing Agreement between the province and the government of Canada.

[24] Although Article 10.9 of the agreement between the Province and the City of Richmond places obligations on the municipality not to compromise or settle any claim to which the province might

become liable, this article appears to me to exist for the purpose of ensuring that the province's right to indemnity from Canada is not prejudiced by anything that the municipality might do. A breach of this provision by the City of Richmond may give rise to contractual liability to the province, but it does not lead to an inference that the City of Richmond has vicarious liability for the torts of R.C.M.P. officers acting in the municipal policing unit assigned to Richmond.

[25] The plaintiff has also argued that Article 10.3(c)(iii) in excluding from the Basis for Payment provision of the agreement the costs of any civil action and related matters would not be necessary if it were contemplated that there would be no municipal liability pursuant to the **Police Act** for the torts of R.C.M.P. officers engaged by a municipality. In my view, such an inference cannot be fairly drawn. Exclusion of this item from the cost of the service flows from the fact that in the contract between the federal and provincial governments, Canada has assumed responsibility for this cost. It is not a cost to the province. I note, in passing, that also excluded from the Basis for Payment is the cost of transferring personnel, likely for the same reason.

[26] Section 20 of the **Police Act** makes the municipality liable for torts of municipal constables but not provincial constables. There is no reason not to treat the definition of "municipal constable" in s. 1 as exhaustive. In fact, there are good policy

reasons to have a municipality made liable for municipal constables because of the much more direct role that they play in the establishment and administration of a municipal police force.

[27] It is my conclusion that the R.C.M.P. constables serving in a municipal police unit remain provincial constables. They do not become municipal constables by either the provisions of the **Police Act** or the Municipal Police Unit Agreement made between the province and the municipality. A municipality is not vicariously liable for constables who are not municipal constables.

[28] For these reasons I find that the City of Richmond is entitled to an order that the action against it be dismissed.

[29] No submissions were made with respect to costs. If the parties are unable to resolve the matter they may make written submissions on this issue.

"B.F. Ralph, J."
B.F. Ralph, J.

New Westminster, British Columbia
December 15, 1998