



15/8/88

No. C854320
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)
)
 DOUGLAS MARK BAUDER)
)
 PLAINTIFF)
)
 AND:)
)
 CONSTABLE LAWRENCE ROBERT WILSON,)
 CONSTABLE ROBERT RENTON PERRY,)
 CONSTABLE WALTER JOHN BEATTY,)
 CONSTABLE F. FISCHER,)
 CONSTABLE D. GIBBONS,)
 HER MAJESTY THE QUEEN IN RIGHT OF)
 THE PROVINCE OF BRITISH COLUMBIA and)
 ATTORNEY GENERAL FOR THE)
 PROVINCE OF BRITISH COLUMBIA)
)
 DEFENDANTS)

REASONS FOR JUDGMENT
OF THE HONOURABLE
MR. JUSTICE S. M. TOY

Counsel for the Plaintiff:

F. G. Potts, Esq. and
R. Mottus, Esq.

Counsel for the Defendants:
Constable Lawrence Robert Wilson
Constable F. Fischer, Constable D. Gibbons
Her Majesty the Queen and the Attorney
General for British Columbia

Paul Partridge, Esq.

Counsel for the Defendants:
Constable Robert Renton Perry and
Constable Walter John Beatty

G. J. Harris, Esq., Q.C.

Date and Place of Trial:

25, 26, 27, 30, 31, May, 1988
Vancouver, British Columbia.

The plaintiff is suing five Royal Canadian Mounted Police officers, Her Majesty the Queen and the Attorney General, claiming damages for assaults, negligence and breaches of his Charter rights.

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5 The events in issue commenced in a ground-floor residence of a four-
6 plex situated at 13065 - 101B Avenue, Surrey, B.C. on the 13th of September, 1984.
7 The residence was occupied by a Mr. Paul Brownell who that morning had asked his
8 upstairs neighbor, a Mr. Randy Roblin, to keep an eye on the place for him. Later
9 in the afternoon, Mr. Roblin saw two men in Mr. Brownell's residence who he
10 apparently did not know or recognize and he went upstairs to his residence and
11 telephoned the Surrey R.C.M.P. and reported a breaking and entering in progress.
12 This complaint was promptly acted on by the radio dispatcher, resulting in four
13 police vehicles, containing the five defendant police officers, arriving at the
14 Brownell residence, one after the other, commencing about 7:20 p.m. that evening.
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16 Although I will fairly succinctly state my findings of fact, I do so after
17 an inordinate expenditure of time reviewing my notes of all the witnesses'
18 evidence. In cases of this nature, in addition to the serious consequences which
19 can result where police officers' integrity is put in question, there is the added
20 difficulty that persons face when they allege that they have been assaulted as they
21 run the risk of having other police officers tailoring their evidence, or withholding
22 evidence. Regrettably these situations can occur when this type of allegation is
23 made. In this case there are incidences of unreliable witnesses, mistaken
24 testimony and the possibility of the improper withholding of information by a
25 witness in other court proceedings that have occurred.
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27 The facts as I find them are as follows:
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1. The plaintiff and a companion, a Mr. Ted Klenkey, who were both known to Mr. Brownell, arrived unannounced at his ground-floor residence late in the afternoon of the 13th of September, 1984. The door was ajar and the television set was on and they entered the premises. Mr. Klenkey went to the living room to watch a ^{hockey} ~~hocky~~ game and the plaintiff busied himself with rummaging around some papers in the kitchen area. He found there a fully-loaded 9 mm, semi-automatic pistol. This item he showed to Mr. Kenkey, who returned it to the plaintiff and he in turn placed it on the kitchen table. He then sat at the table and placed a telephone call to his common law girlfriend, explaining he would be late getting home as their car had a flat tire and he was awaiting Mr. Brownell's return and assistance.
2. In response to Mr. Roblin's telephone call to the police, the first officer to arrive at the residence was Constable Perry. He entered the premises with a night stick in hand. He spoke briefly with Mr. Klenkey and then turned his attentions to the plaintiff who by now, according to his evidence, had secreted the pistol (which is only five or six inches in length) behind a jean jacket at his back on the chair on which he was sitting.
3. In response to Constable Perry's questions as to who the plaintiff was he gave a false name. Constables Wilson and Fischer arrived next, followed by Constable Beatty and, lastly, Constable Gibbons, all of whom fanned out in the residence and performed various searching and surveillance tasks. It was then a very low keyed investigation.

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5 4. Constable Perry left the residence to check the identification given to
6 him by the plaintiff and returned and confronted him with the
7 information that he could not be the person that he told him he was.
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- 9 5. Mr. Brownell arrived home and, in an apparent state of shock at seeing
10 what was going on, was asked to leave the immediate area by the back
11 door and accompany Constables Gibbons and Fischer to a location about
12 25 to 30 feet away in a northwesterly direction from the back door, in
13 the back yard area. There he was asked to answer questions put to him
14 by the police officers.
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- 16 6. Constable Perry asked the plaintiff to complete his telephone
17 conversation and shortly after that Constable Wilson inquisitively
18 tugged on the plaintiff's jean jacket which was at the plaintiff's back
19 and being sat upon by him. This caused a screw driver to fall out of the
20 pocket of the jean jacket. Movement of the jean jacket somehow
21 exposed to Constable Perry's keen eyes the butt or handle of the pistol,
22 which prompted him to immediately unholster his service revolver and
23 point it at the plaintiff. He ordered the plaintiff either not to move or
24 to go to the floor.
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- 26 7. Constable Beatty, who was to the plaintiff's right side, seeing Constable
27 Perry's action, grabbed him by the hair and put him to the floor in front
28 of the chair upon which he had been sitting. Constable Beatty followed
29 him onto the floor and rapidly applied handcuffs to the plaintiff's hands
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4 behind his back. The pistol apparently remained on the chair. In this
5 taking-down process the plaintiff said he hit his head against the wall
6 and he cracked his upper plate and was dazed but not rendered
7 unconscious.

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9 8. I find that in the meantime Constable Wilson ordered Mr. Klenkey to
10 the floor where he then kneeled on his back and put handcuffs on his
11 hands behind his back. Constable Wilson then advised both the plaintiff
12 and Mr. Klenkey they were under arrest for the possession of a
13 restricted weapon.

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15 9. Constable Perry ordered the plaintiff to stand up but Constable Beatty
16 took the plaintiff by the handcuffs' chain in one hand and his hair in the
17 other hand and lifted him up and placed him on his feet in front of
18 Constable Perry.

19
20 10. While standing in front of the plaintiff and while he was under the
21 complete domination of Constable Beatty, Constable Perry struck one
22 clenched fist blow to the plaintiff's abdomen. Constable Beatty
23 testified he did not see the blow struck because the plaintiff was
24 between him and Constable Perry but he felt the plaintiff wince. In
25 previous proceedings he said the "wince" had resulted in the plaintiff
26 doubling over.

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28 11. Constable Beatty then turned the plaintiff and walked him four or five
29 steps to and out the residence's doorway in a painful hold that caused
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4 the plaintiff to be walking virtually on his tiptoes. The technique
5 involved, elevating the plaintiff's hands and arms behind him by pulling
6 up on the chain connecting the two handcuffs with one hand and with
7 the other hand grabbing the plaintiff's hair and pulling his head back.
8 As the plaintiff and Constable Beatty proceeded from the back door to
9 the driveway, in response to a question by Constable Gibbons, Constable
10 Beatty informed him, Fischer and Mr. Brownell that the plaintiff had
11 been sitting on a pistol.

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13 12. Constable Beatty guided or pushed the plaintiff around the corner into
14 the driveway leading out to 101B Avenue and, by some misjudgment,
15 caused the plaintiff to stumble and fall to the ground, where he scraped
16 his face and broke and lost his lower plate. Constable Beatty again
17 picked the plaintiff up in the same painful fashion, by the handcuffs'
18 chain and his hair and proceeded out to the east of the driveway where
19 his police car was parked.

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21 13. There, intending to search the plaintiff and unlock the police car to
22 place the plaintiff in it, he forced the plaintiff's body over the hood on
23 the passenger's side of the vehicle. On two occasions, with his hand
24 still holding the plaintiff's hair, he smashed the plaintiff's face onto the
25 hood of the police car.

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27 14. Shortly after Constable Beatty exited the residence with the plaintiff,
28 Constable Perry, with one hand on Mr. Klenkey's handcuffs' chain and
29 the other on his throat, exited the residence and walked him to and
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4 placed him in his police car, which was parked on the other side of the
5 driveway directly in front of 13065 - 101B Avenue. Klenkey's evidence
6 was that he saw the plaintiff's head twice hit the hood of Beatty's
7 police car. That evidence was confirmed by Mr. Roblin, who viewed
8 this from his upstairs window approximately 70 feet away and heard the
9 noise caused by the plaintiff's head hitting the hood of the police car.

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11 15. Neither Constable Gibbons or Constable Fischer witnessed or heard the
12 taking of the plaintiff or Klenkey to the floor at the time of their
13 arrest, nor were the noises loud enough to attract their attention as to
14 what was going on. It was not until Constable Beatty exited the
15 residence with the plaintiff that they had any idea of what was going on
16 inside the residence.

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18 16. Neither Constables Wilson, Gibbons or Fischer witnessed the plaintiff
19 falling in the driveway on his way out to Constable Beatty's vehicle, nor
20 the slamming of the plaintiff's head on the police car hood as they were
21 by then all inside the residence, continuing their investigation.

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23 17. Throughout the entire period of this investigation until both Klenkey
24 and the plaintiff were placed in the two police cars, neither had acted
25 in an offensive, abusive or uncooperative manner. The plaintiff had
26 offered no resistance, given no abuse, and additionally his identity was
27 unknown to the police. The only unusual events were, firstly, in point
28 of time, that the plaintiff gave a false name - which is not too
29 remarkable in a policeman's life. Secondly, but more importantly, the
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4 plaintiff was seated with a fully-loaded 9 mm semi-automatic pistol
5 under his crotch, which eventually was spotted by Constable Perry.
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7 The plaintiff, when he was put to the floor by Constable Beatty, may
8 have been dazed. As a result, he may not be able to recall that Constable Perry,
9 by his own admission, took a poke at him in the midriff, i.e., his abdomen. This
10 event is in part confirmed by the evidence of Constable Beatty, who felt the
11 plaintiff's body wince at or about the time Constable Perry said he delivered the
12 blow.
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14 However, the plaintiff's testimony is that on his way to the residence
15 door, Constable Beatty struck him three fist blows to his abdomen and that
16 Constable Perry struck him in the ribs two or three times with his night stick. This
17 evidence I reject as it is denied both by Constables Perry and Beatty and in this
18 connection they are supported by Constable Wilson. Additionally, the plaintiff's
19 companion, Mr. Klenkey, lends no support to the plaintiff's testimony. It should
20 also be noted that in the eight particulars of assaults alleged in paragraph 8 of the
21 recently amended statement of claim, there is no allegation that could embrace
22 such a series of assaults. I do not believe the plaintiff regarding his testimony on
23 those latter events.
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25 In one other respect I find the plaintiff unreliable, to the extent of
26 being untruthful. That is in connection with his version of the head slamming on
27 the hood of Constable Beatty's police vehicle. It was the plaintiff's testimony that
28 his face was smashed on to the hood four times. That evidence is not supported by
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4 either Mr. Klenkey or the independent witness, Mr. Roblin, who saw and heard the
5 plaintiff's head smashed on to the hood on two occasions. I find Mr. Roblin's
6 evidence dovetails very closely with the evidence of Constable Beatty.

7
8 Lastly, there was belatedly-amended claim that Constable Beatty had
9 pushed the plaintiff's head into the door frame when he placed the plaintiff in his
10 police vehicle. Again the witness Mr. Roblin did not see anything of an unusual
11 nature when the plaintiff was placed into the police vehicle. Here again I reject
12 the plaintiff's evidence.

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14 Much was made of evidence Constable Wilson gave when he said that he
15 observed Constable Perry kick the plaintiff in the head as Constable Beatty was
16 lifting the plaintiff off the floor. I do not propose to detail the many
17 inconsistencies in his statements, testimony on former occasions and his
18 examination for discovery. Suffice it to say, at the time Constable Wilson said he
19 made this observation, my finding is that he was in the process of handcuffing and
20 arresting Mr. Klenkey and he is mistaken in his recollection of what in fact
21 occurred - when he testified that Constable Perry kicked the plaintiff in the head.

22
23 Counsel for the plaintiff, in his closing argument, submitted that I
24 should draw adverse inferences because his counsel did not call Constable Perry as
25 a witness in his own defence. Constable Perry was called as an adverse witness by
26 plaintiff's counsel during the plaintiff's case and there was full opportunity to
27 cross-examine him on any matters that could shed light on the plaintiff's causes of
28 action. Since he declined to exhaust that opportunity, I do not consider it
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4 appropriate to be drawing any adverse inferences when Constable Perry's counsel
5 has decided not to call him as a witness in his own defence.
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7 Secondly, counsel for the plaintiff submitted adverse inferences should
8 be drawn because the defendants did not call Mr. Brownell as a defence witness.
9 Mr. Brownell was outside the residence with Constables Fischer and Gibbons. Both
10 Constables Fischer and Gibbons testified as to what they did, saw and heard, at the
11 material times. Had Mr. Brownell contradictory evidence to give, it seems to me
12 that the plaintiff's counsel would have had an equal opportunity to interrogate that
13 potential witness and, if he had favourable testimony to give, that he could have
14 called him as a rebuttal witness. Again, I decline to draw any adverse inference in
15 connection with the failure of the defendants to call Mr. Brownell.
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17 I propose to deal with the cases against the defendants in this order:

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19 1. Constable Fischer and Constable Gibbons,
20 2. Constable Wilson,
21 3. Constable Perry,
22 4. Constable Beatty, and
23 5. Her Majesty the Queen and the
24 Attorney General.

25 Constables Fischer and Gibbons:
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27 The essence of the case against these two defendants is that the
28 plaintiff, once arrested, was in custody and, as police officers, they were under a
29 duty to protect him, to ensure his safety and to prevent any assaults occurring by
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anyone, including other police officers. I do not quarrel with those general propositions.

The facts as I find them place both of these officers 25 to 30 feet outside of the residence where the plaintiff and Mr. Klenkey were arrested. They did not know and could not have seen that the plaintiff was struck in the abdomen by Constable Perry and they did not see either the plaintiff fall in the driveway or the head-smashing incidents in the front of the residence on Constable Beatty's police vehicle.

In my judgment the facts do not support the conclusion that these two defendants owed any duties to the plaintiff on the evening in question that they failed to perform.

Constable Wilson:

Here the plaintiff's case is the same as against Constables Fischer and Gibbson, only stronger because, according to his own evidence, Constable Wilson said he saw the plaintiff being kicked by Constable Perry and did nothing about it. I have found that Constable Wilson is mistaken and that what in fact occurred was that Constable Perry struck one blow to the plaintiff's abdomen. If Constable Wilson had observed that event, did obligations arise imposing duties on him at that time to protect the plaintiff and ensure his safety and prevent further assaults? I think not.

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4 It must be remembered that mere seconds before Constable Perry
5 struck the blow that he had initiated a sudden arrest procedure by unholstering his
6 service revolver, that the plaintiff had been taken to the floor and quickly
7 handcuffed by Constable Beatty, that a semi-automatic pistol was on the chair,
8 originally underneath the plaintiff, and that Constable Wilson was in the process of
9 neutralizing the plaintiff's companion, Mr. Klenkey, who might also have been
10 carrying or concealing a weapon. To me it is clear that until Mr. Klenkey was
11 completely neutralized and removed from the scene, especially with the semi-
12 automatic pistol still located on the chair, that Constable Wilson's attentions and
13 obligations should have been exclusively directed to Mr. Klenkey, as opposed to
14 dropping that responsibility and running off to protect the plaintiff from further
15 potential assaults that might, but in fact, did not occur.

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17 As with Constables Fischer and Gibbons, on the facts as I find them, I
18 am unable to conclude that Constable Wilson owed any duty at that time to protect
19 the plaintiff or ensure his continued safety that he failed to perform.

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21 **Constable Perry:**

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23 After having re-holstered his service revolver and observing that
24 Constable Beatty had the plaintiff securely handcuffed and completely under
25 control, Constable Perry delivered an unprovoked clenched-fist blow to the helpless
26 plaintiff's abdomen. In his testimony under cross-examination, Constable Perry
27 said that he had not formed any intent and that the blow was a simple reflex
28 action. Not surprisingly, I find that Constable Perry unjustifiably assaulted the
29 plaintiff.
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Constable Beatty:

Constable Beatty took the plaintiff to the floor in a violent manner, following through on Constable Perry's rapid movement in unholstering his service revolver and pointing it at the plaintiff. The pointing of the revolver by Constable Perry I find to be a reasonable and justifiable action on the part of that officer. Both Constables Perry and Beatty were investigating an alleged breaking and entering when Constable Perry observed a semi-automatic pistol under the crotch of one of the two suspects, both of whom were at that time unknown to the police. It was a situation fraught with potential danger for all and I have concluded that the force used by Constable Beatty in taking the plaintiff to the floor and handcuffing in the fashion he did to be reasonable and justifiable.

However, once handcuffed and under arrest, notwithstanding the level of excitement, apprehension and possible danger, the lifting and placing of the plaintiff in an upright position in the fashion I have previously described I consider to be an unjustifiable and unreasonable use of excessive force.

I have come to the same conclusion concerning the lifting up of the plaintiff after he fell in the driveway and I further conclude that Constable Beatty was negligent in letting the plaintiff fall while he was guiding and pushing him out of the driveway in the unusual hold that he had on the plaintiff.

Lastly, I find that the plaintiff was assaulted by Constable Beatty on two occasions when he slammed the plaintiff's head on to the hood of his police vehicle. Neither assault could be justified. If the plaintiff did attempt to stand

erect while the constable sought to search him, or unlock his car door, I find that his purposes could have been accomplished equally well by calling to his aid one of the other three officers not engaged in the escorting process, rather than the actions he took in slamming the plaintiff's face on the hood of the police car.

Her Majesty the Queen and the Attorney General:

Through their counsel, Her Majesty and the Attorney General admit that they are liable jointly and severally for whatever damages the plaintiff has suffered and for which any of the other defendants are liable.

DAMAGES

I now turn to the problem of what damages the plaintiff has suffered.

The plaintiff testified that he received a black eye, his left eye and lips were swollen and there was a bump on his head. He said all of these injuries cleared up in two weeks. He received some scratches when he fell in the driveway which he said cleared up in three weeks.

The plaintiff claims he had headaches which he attributes to the loss of his dentures. The plaintiff's past history of headaches and his withdrawal from the excessive consumption of alcohol and drugs suggest to me that his headache complaint derived from other causes. In the absence of any professional opinion supporting this part of the plaintiff's claim, I find this claim not established on the balance of probabilities.

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5 The plaintiff had handcuff injuries on his wrists which lasted for three
6 weeks and he had shoulder problems which he said restricted his full range of
7 movement for about one month. The plaintiff's residual complaints are minimal
8 and there is really no medical evidence to support any of the plaintiff's residual
9 complaints. Indeed, x-rays and ophthalmological examinations conducted within
10 days of the 13th of September, 1984 indicate that the plaintiff did not suffer any
11 serious injuries to the bones in his face or his eyes.

12
13 All of the foregoing injuries I find were caused by the defendant
14 Constable Beatty's actions in too violently picking the plaintiff up on two
15 occasions, by his negligence in letting the plaintiff fall, and by smashing the
16 plaintiff's head on the police vehicle on two occasions.

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18 The award I make for the pain and suffering and loss of enjoyment of
19 life, including the loss of use of his dentures, I fix at \$2,000.00.

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21 The plaintiff's counsel claims and has pleaded that the plaintiff is
22 entitled to aggravated damages. In paragraph 13 of the statement of claim the
23 allegation is that the plaintiff was humiliated in the presence of friends and divers
24 members of the public and subject to ridicule and contempt.

25
26 There were only two non-police witnesses to the events in question,
27 namely Mr. Klenkey and Mr. Roblin and, of course, the plaintiff himself testified.
28 None of the three gave any evidence that I recall from which one could conclude
29 that the plaintiff was caused any loss of dignity or humiliation.
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4 The plaintiff is a man with an atrocious criminal record. He is now 33,
5 but since age 16, he has been serving jail sentences or on mandatory supervision or
6 he has been fleeing from the consequences of charges that he has refused to face in
7 Eastern Canada. Under the circumstances I am not prepared to make any award
8 for aggravated damages.

9
10 The plaintiff claims punitive or exemplary damages. In this connection
11 it must be borne in mind that Constable Beatty, like the rest of the police officers,
12 had no idea who the plaintiff was or if he was a fugitive seeking to avoid the
13 consequences of criminal charges elsewhere in Canada. All Constable Beatty knew
14 was that he had taken down and handcuffed a man who had been seated on a semi-
15 automatic pistol. To all concerned that must have presented a potentially
16 dangerous situation.

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18 However, by the time the plaintiff was handcuffed on the floor, and had
19 been told that he and his companion were under arrest by Constable Wilson for
20 possession of a restricted weapon, Constable Beatty became the plaintiff's
21 custodian. He had, of course, further duties to search the plaintiff and then escort
22 him to the R.C.M.P. lock-up. However from the time the plaintiff was arrested
23 and under his control, Constable Beatty was obliged not to use excessive force and
24 to care for the plaintiff's safety and not cause him or allow others to cause him
25 injury.

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27 I have found that the force used was excessive in raising the plaintiff
28 from the ground on two occasions by lifting him by the hair and the handcuffs'
29 chain behind his back and that he deliberately assaulted the plaintiff by slamming
30 his face onto the hood of the police car also on two occasions.

Much was said in argument about the understanding the police officers had that in the first instance any judgment awarded against them would be paid by the federal government. That is an irrelevant consideration on the issue of the quantum of the punitive or exemplary awards. So also are the considerations that internal disciplinary proceedings were taken against both Constable Beatty and Constable Perry and that assault charges were prosecuted resulting in Constable Perry's acquittal and Constable Beatty's conviction and conditional discharge.

An award for punitive or exemplary damages is in addition to the compensatory damages that have been awarded. The basis for my making such an award is to punish Constable Beatty, to make an example of him, and to deter him and possibly others from similar future conduct. The actions of Constable Beatty cannot be condoned or justified. To express the Court's dissatisfaction with such conduct, I award an additional \$5,000.00 as exemplary or punitive damages.

I turn next to the plaintiff's claim for relief under s. 24(1) of the **Canadian Charter of Rights and Freedoms**. Here the argument is that the plaintiff's rights guaranteed under ss. 7 and 12 have been infringed, denied or breached by Constable Beatty and the other officers.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

...

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

...

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(Underlining for emphasis is mine)

Counsel for the plaintiff relied on two authorities in support of this additional head of damage. The first authority is a judgment of Mr. Justice Walsh of the Federal Court of Canada (Trial Division) in Arnold Harper Crossman v. The Queen (1981), 1 F.C. 681, wherein he granted a damage award against the employers of a police officer who had infringed an accused person's right to retain and instruct counsel without delay. Mr. Justice Walsh concluded that the accused should be awarded \$500.00 punitive damages even though Crossman had suffered no damage since to fail to impose some sanction would be construed as condoning a police officer's illegal conduct.

In the second case, The Honourable Judge Murphy in David George Lord v. B. E. Allison and Her Majesty the Queen in the Right of the Province of British Columbia, an unreported judgment filed on the 13th of May, 1986, Victoria Registry No. 83/2281, awarded damages for infringements of a plaintiff's rights under s. 12, in addition to awards for compensatory and punitive damages where the plaintiff had, amongst other things been assaulted by a police officer.

The Crossman case I distinguish on the basis that, as argued in that case, the plaintiff had no other common law or statutory rights that had been

breached and the only remedy he could pursue was by virtue of the rights he claimed he was entitled to have preserved by the **Charter**.

The Lord case is not so distinguishable and I am left in the unhappy position of not agreeing with the result arrived at.

In the case at bar the plaintiff has claimed and I have awarded him compensatory damages for the injury that he has suffered in not only the assaults and use of excessive force but, additionally, I have granted him relief based on Constable Beatty's unwarranted conduct to punish him and make an example of him and to deter him and others from such conduct.

The causes of action as pleaded and the evidence relied on in support giving rise to a claim for a **Charter** remedy under s. 24(1) are the same as those for which I have already granted the plaintiff his common law remedies, both for compensatory damages as well as punitive or exemplary damages. There is therefore no need to invoke a **Charter** remedy as the common law dictates to me that the plaintiff is entitled to the remedies that I have already awarded to him which arose due to the impugned conduct.

Further, to grant an additional financial award to the plaintiff runs contrary to the principle that double compensation should not be awarded. If an additional award were to be made, it would be a duplication of payment for the compensatory award or, alternatively, of the punitive or exemplary award that I have made. In either case I am of the opinion that an additional financial award to

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4 the plaintiff would be neither "appropriate" nor "just" which are the criteria to be
5 satisfied before a competent court can grant a remedy under s. 24(1).
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7 It should be noted that a similar result was arrived at by Mr. Justice
8 Stevenson of the New Brunswick Queen's Bench Trial Division in Breen v. Saunders
9 and Frederickton (1986), 71 N.B.R. (2d) 404, however that decision was obviously
10 not made available to Judge Murphy before he delivered his judgment in the Lord
11 case.
12

13 I accordingly dismiss the plaintiff's claim for additional remedy for
14 breaches or infringements of the plaintiff's rights as guaranteed under both ss. 7
15 and 12 of the **Charter**.
16

17 Special damages were claimed by the plaintiff for replacement of his
18 dentures. He supported this claim with an estimate of some \$630.00 which, with
19 some hesitation, I also award against the defendant Constable Beatty.
20

21 With regard to Constable Perry, the one punch to the plaintiff's
22 abdomen was an unnecessary and a totally thoughtless act. Although little was said
23 by the plaintiff of abdominal pain, there must have been some pain and suffering
24 for which I assess \$100.00 general damages.
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26 The solitary blow was close in time to what must have been a time of
27 great excitement when there was little if any time to reflect. The situation
28 demanded immediate action and reaction to a highly-charged situation. On the
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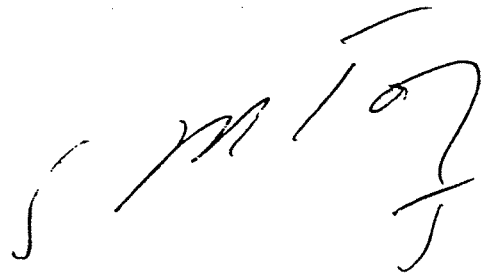
other hand, Constable Perry had before him a man under the complete domination of a brother officer. Striking a man in such a situation was totally unjustified

My award for punitive and exemplary damages to deter this officer and others from such momentary lapses of their responsibilities is \$1,000.00.

For the reasons expressed previously in connection with the claims against Constable Beatty, I decline to make any award for aggravated damages or for any additional award for Charter breaches.

Counsel for Her Majesty the Queen and the Attorney General not having made any submissions to the contrary, there will be judgment against them jointly and severally with the two awards that I have made, firstly, against Constable Beatty aggregating \$7,630.00 and \$1,100.00 against Constable Perry.

The plaintiff will have his costs of this action.

A handwritten signature in black ink, appearing to be 'S. M. T. J.', is written in the lower right quadrant of the page.

Vancouver, British Columbia
August 15, 1988