SUPREME COURT OF YUKON

Citation: *Sidhu v Canada (The Attorney General)*, 2015 YKSC 53

Date: 20151117
S.C. No. 14-A0118
Registry: Whitehorse

Between:

MANDEEP SINGH SIDHU

PLAINTIFF

And

THE ATTORNEY GENERAL (CANADA), Constables ANDREW WEST, MIKE SEIDEMANN, MATTHEW LEGGETT and SCOTT CARR and Corporals NATASHA DUNMALL and JASON B. WALDNER members of the ROYAL CANADIAN MOUNTED POLICE

DEFENDANTS

Before Mr. Justice L.F. Gower

Appearances:
Susan Roothman — Counsel for the plaintiff
Jonathan Gorton — Counsel for the defendants

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the defendants to strike certain paragraphs, and portions of paragraphs, in the plaintiff's amended statement of claim. The application is brought under Rule 20(26), which authorizes the court to strike pleadings on any of the following grounds:

a) that they disclose no reasonable claim (cause of action);

b) that they are unnecessary, scandalous, frivolous or vexatious; or

c) that they may prejudice, embarrass or delay the fair trial of the proceeding.

[2] The plaintiff, Mandeep Sidhu, is a Whitehorse resident of East Indian descent. He has a university education and is currently the manager of a family-owned laundromat. He commenced this action principally based on interactions he had with members of the Royal Canadian Mounted Police ("RCMP") on December 2 and 5, 2012. He claims these give rise to torts of unlawful detention, unlawful arrest, malicious prosecution, assault and battery, and breaches of his rights under the *Canadian Charter of Rights and Freedoms*, in particular, ss. 7, 9, 10 and 15. The constitutional tort alleged under s. 15 of the *Charter* is racial profiling/discrimination.

[3] The defendants are the various RCMP members who interacted with the plaintiff on December 2 and 5, 2012, as well as the Attorney General of Canada.

[4] The defendants challenge the propriety of paragraphs in the amended statement of claim (set out below at para. 12) which allege past and continuing police conduct purportedly supporting the claim of racial profiling.

LAW

[5] Counsel for the respective parties largely agree on the relevant law relating to the striking of pleadings.

[6] The applicable test for striking a statement of claim is whether it is "plain and obvious" that the impugned pleading satisfies one of the grounds under Rule 20(26). This was recently articulated by the Supreme Court of Canada in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42:

> 17 The parties agree on the test applicable on a motion to strike for not disclosing a reasonable cause of action under r.

> 19(24)(a) of the B.C. *Supreme Court Rules*. This Court has reiterated the test on many occasions. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] 3 S.C.R. 83; *Odhavji Estate*; *Hunt*; *Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.[1]
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> …
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> 22 A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted. (my emphasis)

[7] I pause here to note that were the application brought solely under Rule 20(26)(a) ("no reasonable claim"), then sub-rule (29) would prohibit the admission of any evidence on the application. However, because the application is also grounded under Rule 20(26)(b) ("unnecessary" and "frivolous") and Rule 20(26)(c) ("embarrassing" and leading to "delay") the prohibition against evidence does not apply. I mention this because

[1] Only Rule 19(24)(a) was engaged in that case, which is equivalent to our Rule 20(26)(a) (no reasonable claim/cause of action). However, in the case at bar, all three grounds under Rule 20(26) are at issue.

both sides have filed and rely upon affidavits in relation to the application.

[8] In *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (S.C.), Romilly J. discussed the meaning of the terms “unnecessary”, “scandalous”, “frivolous” and “embarrassing”:

> 45 To succeed on an application under Rule 19(24)(b) or (c) [the equivalent to our Rule 20(26)(b) and (c)] it must be established that it is "plain and obvious" that the pleading offends either or both provisions.
>
> 46 The authorities provide little guidance as to what constitutes pleadings that are "unnecessary", "scandalous", "frivolous" or "embarrassing". However some principles do emerge.
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> 47 Irrelevancy and embarrassment are both established when pleadings are so confusing that it is difficult to understand what is being pleaded: *Gittings v. Caneco Audio-Publishers Inc.* (1987), 17 B.C.L.R. (2d) 38 (B.C.S.C.). An "embarrassing" and "scandalous" pleading is one that is so irrelevant that it will involve the parties in useless expense and will prejudice the trial of the action by involving them in a dispute apart from the issues: *Keddie v. Dumas Hotels Ltd.* (1985), 62 B.C.L.R. 145 at 147 (B.C.C.A.). An allegation which is scandalous will not be struck if it is relevant to the proceedings. It will only be struck if irrelevant as well as scandalous: *College of Dental Surgeons of B.C. v. Cleland* (1968), 66 W.W.R. 499 (B.C.C.A.). A pleading is "unnecessary" or "vexatious" if it does not go to establishing the plaintiff's cause of action or does not advance any claim known in law: *Strauts v. Harrigan*, [1992] B.C.J. No. 86 (Q.L.) (B.C.S.C.). A pleading that is superfluous will not be struck out if it is not necessarily unnecessary or otherwise objectionable: *Lutz v. Canadian Puget Sound Lumber and Timber Co.* (1920), 28 B.C.R 39 (C.A.). A pleading is "frivolous" if it is obviously unsustainable, not in the sense that it lacks an evidentiary basis, but because of the doctrine of estoppel: *Chrisgian v. B.C. Rail Ltd. et al*., [1992] B.C.J. No. 1567, (6 July 1992), Prince George Registry 20714 (B.C.S.C.). (my emphasis)

[9] On applications to strike, the pleadings are to be given a generous interpretation

and need not be perfect: *Miguna v. Toronto (City) Police Services Board*, 2008 ONCA 799, at paras. 31 and 78.

[10] There is also little dispute about what constitutes racial profiling. This was dealt with by the Ontario Court of Appeal in *Peart v. Peel Regional Police Services Board* (2006), 217 O.A.C. 269:

> 89 In *R. v. Richards* (1999), 26 C.R. (5th) 286 at 295, Rosenberg J.A. quotes a definition of racial profiling offered by the ACLC:
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> > Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.
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> 90 **A police officer who uses race (consciously or subconsciously) as an indicator of potential unlawful conduct based not on any personalized suspicion, but on negative stereotyping that attributes propensity for unlawful conduct to individuals because of race is engaged in racial profiling**: see Kent Roach, "Making Progress on Understanding and Remedying Racial Profiling" (2004) 41 Alta. L. Rev. 895 at 896.
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> 91 Racial profiling is wrong. It is wrong regardless of whether the police conduct that racial profiling precipitates could be justified apart from resort to negative stereotyping based on race. **For example, a police officer who sees a vehicle speeding and decides to pull the vehicle over in part because of the driver's colour is engaged in racial profiling even though the speed of the vehicle could have justified the officer's action**: *Brown v. Durham Regional Police Force* (1998), 131 C.C.C. (3d) 1 (Ont. C.A.). Police conduct that is the product of racial profiling and interferes with the constitutional rights of the target of the profiling gives rise to a cause of action under the *Charter*.
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> …

> 95 **Racial profiling can seldom be proved by direct evidence. Rather, it must be inferred from the circumstances surrounding the police action** that is said to be the product of racial profiling…. (underlining already added, my bolding)

ANALYSIS

[11] The plaintiff alleges that he was improperly detained at a RIDE Program traffic check stop in Whitehorse on December 2, 2012. He made a complaint to the RCMP later that day about the conduct of the RCMP officer involved with the check stop, Constable West. The officer who received the complaint determined that the plaintiff had, in the course of her interview with him, uttered threats to cause death or serious bodily harm to Constable West. Thus, a charge of uttering threats was issued and the plaintiff was arrested by four RCMP officers at his laundromat on December 5, 2012. He was then transported in a police vehicle to the Whitehorse courthouse, where he was given an opportunity to speak with a lawyer and deal with the issue of his judicial interim release. The plaintiff was ultimately acquitted of the charge of uttering threats on May 31, 2013. His claims of unlawful detention, and implicitly his claim of racial discrimination (s. 15 of the *Charter*), pertain to both of the incidents on December 2 and 5, 2012. His other claims for unlawful arrest, malicious prosecution, assault and battery, and breaches of his rights under ss. 7, 9 and 10 of the *Charter*, all pertain to the incident of December 5, 2012.

[12] The impugned paragraphs (8 to 19 and 58), and portions of paragraphs (see underlining in 22, 48 and 61 below), in the amended statement of claim are those dealing with allegations of past police conduct towards the plaintiff between 2006 and 2012, and those alleging ongoing improper police conduct since December 2012. They read as follows:

8. During the summer of 2006 he became friends with Angela Spicer, a RCMP officer stationed at Watson Lake RCMP Detachment. The relationship ended when he was confronted by three male officers at his workplace who demanded of him not to contact Angela Spicer but through them.

9. During the summer of 2006 Sidhu was detained several times by various officers for alleged motor vehicle infractions. This continued throughout the summer of 2007 and 2008.

10. During August 2010 Sidhu was arrested for alleged impaired operation of a motor vehicle, obstructing a peace officer, mischief and sexual assault. The charges were stayed.

11. On or about August 23, 2011 Sidhu was pulled over for allegedly using a cellphone while operating a motor vehicle. He was arrested, detained in police cells and later detained under the *Mental Health Act*, charged with assaulting a peace officer, uttering a threat, obstructing a peace officer, mischief and using an iPhone while operating a motor vehicle. The charges were stayed, but for using of an iPhone while operating a motor vehicle for which he was convicted ex parte. The conviction was quashed on appeal on January 8, 2013, after the [C]rown conceded the appeal on the basis that an iPhone was not used by Sidhu.

12. Sidhu did not return to Watson Lake after his arrest during August 2011 and his subsequent detention pursuant to the *Mental Health Act* partly due to the conditions of his release from custody. His family further feared for his safety being on his own in a remote area and being the target of unwarranted police attention. The family business was closed down in Watson Lake and Sidhu lost his job.

13. From August to December 2011 Sidhu was pulled over by RCMP officers in Whitehorse for a further three times to check for proper documents. No tickets were issued pursuant to the *Motor Vehicle Act* on any of the three occasions.

14. Sidhu was arrested by Corporal T.L. Monkman while walking through the RCMP parking lot on October 26, 2011, charged with mischief, which charge was stayed.

15. Sidhu started to work at the family owned Laundromat in Whitehorse during 2012.

16. He was pulled over for an alleged seatbelt infraction on May 16, 2012 by Constable Andrew West and ticketed pursuant to the *Motor Vehicle Act*, which ticket was disputed by Sidhu and stayed.

17. Sidhu was pulled over a further twelve times by various RCMP officers on traffic duty pursuant to the *Motor Vehicle Act* since his forced return to Whitehorse during 2011*,* all of which did not result in any charges.

18. Sidhu laid various complaints with the Commission for Public Complaints against the RCMP about the above mentioned Watson Lake and Whitehorse incidents, which complaints were all informally resolved after investigation by Sergeant Grant D. Lohrenz.

19. Sidhu continues to be a target of unwarranted police attention in Whitehorse by being pulled over pursuant to the *Motor Vehicle Act,* being under sporadic police surveillance at his place of work and being visited by police at his place of work.

…

22. The detention was without reasonable or probable grounds; unlawful; singled Sidhu out as a person of East Indian descent and defamed his recent campaign to run as mayor of Whitehorse.

…

48. The Defendants acted with malice and improper motives based amongst others on the history created by the Watson Lake and Whitehorse Detachments of the RCMP about Sidhu.

…

> 58. Sidhu states that past and continuing police conduct against him as set out in paragraphs 4 to 19, 22, 26 and 48 above is based on racial profiling and discriminates against him as a person of East Indian de[s]cent.
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> …
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> 61. Sidhu claims that his rights pursuant to section 15 of the *Charter* were breached by the Defendants and continue to be in jeopardy of being breached by the Defendants.

[13] The plaintiff's counsel objected to the attempt by the defendants' counsel to strike portions of paras. 48 and 61 because they were not explicitly referenced in his Notice of Application. I disregard this objection for two reasons. First, while para. 48 was not referenced in the Notice of Application, it was specifically referenced in the defendant's Outline of argument, and this was acknowledged in the plaintiff's Outline. Second, there can be no prejudice to the plaintiff here, since his counsel was clearly aware that the defendants' counsel was challenging pleadings based on past and continuing police conduct and the impugned portions of paras. 48 and 61 deal with exactly that. I also have regard here to Rules 1(14) and 2(1).

[14] With respect to the allegations of past police conduct which the plaintiff relies upon in his claim of racial discrimination, the defendants' counsel made the following submissions:

1) The allegations are vague and imprecise.

2) In several instances, the RCMP officers involved are not identified.

3) There are no particulars of what the police officers' conduct was, or what they said to the plaintiff, and thus there is no basis for any inference that they were discriminating against him on the basis of his East Indian race.

4) There are no references whatsoever as to whether the plaintiff felt that there were no reasonable and probable grounds for any of the stops, detentions or arrests.

5) Some of the paragraphs make no reference to police conduct at all (12, 15 and 18).

6) There is no indication whatsoever that the plaintiff raised the issue of racial discrimination in his defence for any of these matters, or at the time of any of these encounters with the police.

7) "Unwarranted police attention" is not a cause of action.

8) The only cause of action which the historical information can possibly relate to is the claim of racial discrimination under s. 15 of the *Charter*. However, in order to succeed on that claim, the plaintiff must prove a distinction based on race. Here, the plaintiff has failed to plead any material facts that could prove a distinction between how the police treated him and others not of East Indian descent in the period between 2006 and December 2012.

9) The alleged unwarranted police attention between 2006 and 2012 is not the subject of the plaintiff's claim and he seeks no relief as a result. Indeed, events that occurred prior to November 20, 2012 are statute barred by the two-year limitation period in s. 2(d) of the *Limitation of Actions Act*, R.S.Y. 2002, c. 139.[2]

10) If the historical pleadings are not struck, then a disproportionate amount of time and resources will be spent on answering the allegations, through:

[2] The original statement of claim was filed on November 20, 2014.

> demands for particulars; document discovery; examinations for discovery; as well as extensive cross-examination and the possible tendering of contradictory evidence at trial. This in turn can reasonably be expected to cause a significant delay in the ultimate resolution of this matter.

[15] In summary, the defendant's counsel submitted that the historical pleadings should be struck for a combination of reasons. First, the pleadings are unnecessary and vexatious because they cannot go to establishing the plaintiff's racial discrimination claim, nor do they advance any other claim known in law. Second, the pleadings are embarrassing and scandalous because they are irrelevant and they will involve the parties in useless expense and will prejudice the trial of the action by involving them in a dispute apart from the central issues arising from the events of December 2 and 5, 2012. Third, they disclose no reasonable claim/cause of action in and of themselves. Thus, it is plain and obvious that the pleadings do not constitute allegations of fact relevant to, or necessary for, the purpose of furthering the claim of racial discrimination associated with the events of December 2012.

[16] As for the plaintiff's claim in paras. 19, 58 and 61 of the amended statement of claim that he continues to be the target of ongoing unwarranted police attention and the subject of racial discrimination, the defendant's counsel made similar submissions:

> 1) Paragraph 19 of the amended statement of claim contains no particulars at all about how the police treated the plaintiff, because of his race, in a manner which is distinct from their treatment of others. Thus, the pleading cannot possibly be probative of whether the plaintiff's equality rights under s. 15 of the *Charter* were breached in December 2012.

2) To the extent that the plaintiff has attempted to adduce further particulars through his affidavit filed October 20, 2015, those particulars ought to have been pled and not sworn to in an affidavit in response to this application.

3) In any event, the plaintiff's affidavit fails to disclose any improper police conduct since the events of December 2012.

4) Any allegations of improper police conduct (vague and unsubstantiated as they are) after the events of December 2012 cannot logically be relevant to whether the particular police officers involved at that time were acting in a racially discriminatory manner. This is because, if there was subsequent improper police conduct, it occurred after the events at issue, and there is no evidence that the subsequent events involved the same police officers.

[17] I am largely in agreement with all of these submissions, except to say that repeated groundless detentions by police officers could give rise to a potential tort of misfeasance in public office or abuse of process. However, neither of those torts are pled here. In any event, I do agree that the plaintiff's counsel has failed to plead any material facts from which an inference can logically be drawn that the police acted in a racially discriminatory manner towards the plaintiff on December 2 or 5, 2012.

[18] The plaintiff's counsel points to para. 26 of the amended statement of claim which reads:

> Sidhu clearly informed Corporal Dunmall [during the complaint interview on December 2, 2012] that he was previously singled out by the RCMP on the basis of his race and that Constable West is continuing to do that. (my emphasis)

This, submitted counsel, ties in both the historical and the ongoing improper police

conduct to the racial discrimination claim. I disagree. This is nothing more than a bald allegation of racial profiling without any particularity.

[19] In *Hamalengwa v. Bentley*, 2011 ONSC 4145, the Ontario Superior Court of Justice was dealing with a black lawyer plaintiff who alleged *Charter* breaches under ss. 7 and 15, based on systemic and personal racial profiling. The defendants applied to strike his statement of claim primarily because it did not disclose a reasonable cause of action and was frivolous and vexatious. There, similar to the case at bar, one of the types of police conduct that the plaintiff alleged was objectionable was being stopped six times by the police while driving a motor vehicle and being issued tickets. The plaintiff conceded that he pled guilty to the traffic violations and did not raise any complaint of racial profiling in response to those charges. Nevertheless, he sought to rely upon them as a basis for his claim under s. 15 of the *Charter.* Lederman J. responded to this point as follows:

> 10 The statement of claim does not plead material facts that would establish any *Charter* breach for racial profiling. Instead, the statement of claim is largely a combination of evidence and argument that racial profiling is a systemic problem. An allegation of racial animus is analogous to an allegation of fraud, misconduct or dishonesty. Thus, a bald allegation of racial profiling without particularity must be struck (*Hamalengwa v. Duncan*, [2005] O.J. No. 851 (S.C.J.) at para. 24; aff'd [2005] O.J. No. 3993 (C.A.) at para. 17; leave to appeal denied, [2005] S.C.C.A. No. 508).
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> 11 It is clear that no fact or particulars are pleaded regarding the allegations of racial profiling related to the various traffic violations. …Even at its highest, the statement of claim does not provide sufficient particulars to ground the plaintiff's allegations of intentional and malicious conduct.

[20] Another interesting point in *Hamalengwa* that relates to the case at bar are the Court's observations, at para. 13, that to allow the pleadings to stand would necessitate "[r]elitigation of the prior traffic infractions" to determine if racial profiling occurred on any

or all of those occasions. This is the point made by the defendant's counsel above, at para. 14(10), with which I agree.

[21] Examples of pleadings which could establish a basis for a claim of racial discrimination are found in *Miguna*, cited above. This is another case involving a black lawyer plaintiff. He was arrested at his law offices in 2002 and charged with sexual assault. He was arrested again in 2003 and charged with three further counts of sexual assault. Both arrests took place in front of colleagues and the public. In 2004, he was acquitted of all charges. He sued the Crown and the police claiming, among other things, malicious prosecution (including a serious allegation of racial profiling), assault and a breach of his *Charter* rights. The defendants applied to have his statement of claim struck on the basis that it disclosed no cause of action, or alternatively, was frivolous and vexatious. The Ontario Court of Appeal refused to strike two of the impugned paragraphs in the statement of claim, stating:

> 73 The racial profiling allegations are particularly important to Mr. Miguna's claim because, if established, they would tend to show malice, abuse of power and possibly a lack of reasonable and probable cause. At paras. 175 and 176 he pleads:
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> > [175] Chen, Pandolfi and Murarotto [the police officers] deliberately detained Mr. Miguna at the 32 Division station rather than issuing a promise to appear at his offices or elsewhere due to their tendency at racial profiling and anti-black racism.
> >
> > [176] Defendants Chen, Pandolfi, Leaver, Murarotto, Couto and Alberga racially profiled Mr. Miguna and believed that he had committed the alleged crimes due to their racism and discriminatory tendencies and not because of any credible evidence or any reasonable or probable grounds.

There are no such pleadings in the case at bar.

[22] In oral argument, the plaintiff's counsel submitted that the "sheer number" of interactions between the plaintiff and the RCMP makes them relevant to the claim of racial profiling. I disagree. Nothing plus nothing equals nothing. Further, the plaintiff has not pleaded that the total number of interactions are a basis for establishing racial discrimination.

[23] It is important for the plaintiff to remember that, in order to succeed on a claim of discrimination under s. 15 of the *Charter*, he must be able to establish that he was discriminated against on the basis of his race, ethnic origin or colour (since no other enumerated or analogous ground under s. 15 is at issue). It is not enough for the plaintiff to argue that the RCMP discriminated against him because he was some kind of a troublemaker or a thorn in their side.

[24] Finally, the plaintiff's counsel relies to a great extent on *Anoquot v. Toronto (City) Police Services Board*, 2015 ONSC 553. In that case, the plaintiff was a First Nations woman. On September 15, 2011, she was detained by private security staff at a Shopper's Drug Mart store in Toronto. She was searched and accused of shoplifting three bottles of perfume. The police were called and took the plaintiff to the police station where she experienced an "embarrassing, intimidating, and callously conducted strip search" by two female officers, to use the words of the chambers judge, Perell J. Subsequently, the plaintiff successfully sought a stay of the criminal proceedings due to an unreasonable, warrantless search.

[25] Ms. Anoquot sued the police force alleging constitutional torts for breaching her *Charter* rights under ss. 7, 8, and 15. The defendants did not challenge plaintiff's cause of action, but rather simply sought to strike out two paragraphs in the statement of claim on

the basis that they were "bald allegations, irrelevant facts, and/or conclusions of law" and were therefore scandalous, frivolous and vexatious. The two impugned paragraphs stated:

> 16. The Toronto Police have conducted numerous strip searches of the Plaintiff in previous arrests. To the Plaintiff's recollection, every-time she has been arrested by the Toronto Police she has been stripped searched. The only time she has been arrested and not stripped searched was when she was arrested by the police in the Kitchener area.
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> …
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> 19. The data shows that in 2010, the Toronto Police Service strip searched 60% of all people arrested. Aboriginal people are overrepresented in the correctional system. This fact has been known by public institutions, including the Toronto Police Service and the Toronto Police Services Board. Aboriginal peoples, such as the Plaintiff, continue to represent a disproportionate number of those who are arrested by police and subjected to personal searches, including strip searches. This systemic issue represents institutional failures and includes the actions by the defendants.

[26] In allowing these paragraphs to stand, Perell J. made a distinction between the plaintiff's *Charter* claims under s. 7 (right to life, liberty and security of the person) and s. 8 (protection against unreasonable searches or seizures) and her claim of discrimination under s. 15 (equality). Perell J. described the first two claims as "connected to her individual experience on September 15, 2011". However, the chambers judge said that plaintiff's claim under s. 15 was "different" in that it connected her individual experience on that day with the allegedly discriminatory experiences of the collective of Aboriginal people of which she was a part. In particular, Perell J. stated, at para. 19, that the plaintiff was bringing a claim similar to a discrimination claim under human rights legislation. He then made the following comments on this point:

> 20 Ms. Anoquot's claims of infringement of s. 7 (Right to Life, Liberty and Security of the Person) and s. 8 (Protection against Unreasonable Searches or Seizures) would seem to be connected to her individual experience on September 15, 2011. However, her claim of an infringement of s. 15 (Equality) is different and connects her individual experience on that day with the allegedly discriminatory experiences of the collective of which she is a part. That is in the nature of a discrimination claim.
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> 21 The nature of discrimination as a legal concept and how it is proven is a work in process.
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> …
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> 27 …she is bringing a claim that has a group element to it because the alleged common and stereotypical treatment of a group is an inherent element of the discrimination claim.
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> 28 Moving on to other objections, the Defendants submit that whether or not Ms. Anoquot has been the subject of a Level Three Search on prior occasions has no relevance or probative value to the action because she has acknowledged that Level Three Searches are to be conducted on a case-by-case basis to determine if reasonable grounds existed for the search incidental to an arrest. The Defendants argue that whether or not a prior search was or was not reasonable has no bearing on the reasonableness of the search on September 15, 2011. With respect, the Defendants seem oblivious to the nature of the claim that Ms. Anoquot is making, which is that the Defendants employ a stereotypical approach and systemically strip search Aboriginals rather than engaging in a case-by-case analysis. (my emphasis)

[27] Similar to the case at bar, the defendants in *Anoquot* also argued that the plaintiff's allegations were vague and therefore vexatious or scandalous and incapable of a response (para. 30). Although Perell J. disagreed with this argument, with respect, he did so in a rather conclusory way:

> 30 Moving on to other objections to paragraphs 16 and 19, the Defendants submit that Ms. Anoquot's allegations are vague and therefore incapable of response. And, they submit that her vague allegations are vexatious or scandalous and should be struck. I fail to see any substance to these

submissions.

> 31 In my opinion, paragraphs 16 and 19 plead material or relevant facts. A pleading of a material or relevant fact cannot be scandalous: *876502 Ontario Inc. v. I.F. Propco Holdings (Ontario) 10 Ltd.* (1997), 37 O.R. (3d) 70 (Gen. Div.); *Dalex Co. v. Schwartz Levitsky Feldman* (1994), 19 O.R. (3d) 463 (Gen. Div.); *Ontario (Attorney General) v. Dieleman* (1993), 14 O.R. (3d) 697 (Gen. Div.); *Duryea v. Kaufman* (1910), 21 O.L.R. 161 (H.C.J.).

[28] In my view, *Anoquot* can be distinguished from the case at bar for a number of reasons:

1) In *Anoquot*, it was alleged that there was an ongoing police practice of strip searching Aboriginal peoples. In the case at bar, there is no allegation of any type of ongoing police practice, such as pulling over people of East Indian descent for motor vehicle checks.

2) In *Anoquot*, the chambers judge seemed to be of the view that the plaintiff's individual experience during the strip search could be shown to be discriminatory because of her connection with the Aboriginal collective of which she was a part and whose members were allegedly systemically strip searched. In particular, Perell J. said this at para. 27:

> 27 … [The plaintiff] is not bringing a group claim; she is bringing a claim that has a group element to it because of the alleged common and stereotypical treatment of a group is an inherent element of the discrimination claim.

In the case at bar, the plaintiff makes no connection at all between his individual experience as a person of East Indian descent during his interactions with the RCMP and the experience of the "collective" with which he might associate, such as the community of other persons of East Indian

descent in Whitehorse.

3) In *Anoquot,* the plaintiff specifically pled that the police practice of systemically strip searching Aboriginal was discriminatory. In the case at bar, the plaintiff has not pled that the historic and ongoing stops, detentions and arrests by the RCMP are part of a systemic police practice which discriminates against persons of East Indian descent. On the contrary, what the plaintiff has pled is a myriad of different types of police conduct towards him as an individual, and not towards other persons of East Indian descent. The various types of conduct include: conversations; detentions; being pulled over and ticketed; being arrested and charged; and being under sporadic police surveillance.

4) Lastly, were I the chambers judge in *Anoquot*, I might have been persuaded to accept the objection of the defendants that the impugned paragraphs were too vague to be sustainable.

[29] I find support for my conclusions here in some general comments expressed in the case of *Iovate Health Sciences Inc. v. NxCare Inc.*, [2007] O.J. No. 4498 (S.C.), which was referred to, but not followed, by Perell J. in *Anoquot*. *Iovate* similarly involved a motion by defendants to strike out paragraphs from a statement of claim for various reasons, including vagueness. Allen J. allowed the motion, and in doing so made the following comments:

> 24 …I am governed in my determination by the rule that the role of pleadings in litigation is to delineate the issues in dispute for the parties and the court in order that an efficient use of the court's and parties' resources can be maintained. [*Lysko, supra*, at para. 64]. As McQuaid, J. in *Touche Ross, supra*, held at para. 4: "[a defendant] must not be left to

> speculate or guess the particulars of the case alleged against him …
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> …
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> 28 The policy behind the rules on proper pleadings is to limit the scope of litigation by reducing its complexity and restricting the length of pre-trial and trial proceedings. I share the Defendants' concern that if the generalized and broad pleadings … are allowed to stand, great prejudice to the Defendants and a burdening of the judicial process will be an inevitable result. The oral and documentary discovery processes will be unduly prolonged and unwieldy…

[30] The final point of disagreement between the parties relates to the second half of para. 22 of the amended statement of claim, which states that the defendants "defamed his recent campaign to run as mayor of Whitehorse". The defendants' counsel objected to this pleading because the plaintiff had failed to plead the material facts necessary to prove this claim of defamation. The plaintiff's counsel argued that this pleading does not amount to a claim for defamation, but rather goes to the malicious intent of the RCMP officer involved during the detention on December 2, 2012. In the alternative, the plaintiff's counsel submitted that the word "defamed" simply be replaced with the word "degraded".

[31] I reject both of the plaintiff's arguments on this point. Pleading that the police officer "defamed" the plaintiff means what it says. Thus, to prove defamation, the plaintiff must generally establish: (1) that the police officer made statements which were defamatory; (2) that the words referred to the plaintiff; and (3) that the words were published, in the sense of being communicated to at least one other person. The plaintiff failed to do so, and therefore the claim must fail.

[32] If the plaintiff's counsel intended to plead that what the police officer did on that

occasion indicates malicious intent, then she ought to have done so. It was open to her to seek to amend the statement of claim to resolve this problem, but she failed to do so.

CONCLUSION

[33] I allow the application and strike paras. 8 through 19, and 58 of the amended statement of claim. I further strike the words in para. 22 “and defamed his recent campaign to run as mayor of Whitehorse.” I further strike the words in para. 48 “based amongst others on the history created by the Watson Lake and Whitehorse Detachments of the RCMP about Sidhu.” I further strike the words in para. 61 “and continue to be in jeopardy of being breached by the Defendants.”

[34] The defendants are entitled to their costs in the cause.

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GOWER J.