Federal Court  Cour fédérale

Date: 20150116

Docket: T-1752-06

Citation: 2015 FC 66

Ottawa, Ontario, January 16, 2015

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

GARY SAUVE

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, MARC FRANCHE (RCMP), LARRY TREMBLAY (RCMP),

Defendants

JUDGMENT AND REASONS

[1] This is an action for damages brought by Gary Sauve against the federal Crown and two members of the Royal Canadian Mounted Police [RCMP], Marc Franche and Larry Tremblay[1]. Mr. Sauve claims general damages for, among other things, stress, anxiety, emotional trauma,

[1] At the time of the relevant events, Mr. Franche held the rank of Corporal. He is now a Sergeant. Mr. Tremblay was then an Inspector. He now holds the rank of Chief Superintendent. For consistency, I have removed all references to their former or current ranks.

pain and suffering, loss of reputation, loss of enjoyment of life, and harassment, all said to be caused by the negligence of the Defendants and by his wrongful detention at their hands.

[2] Most of Mr. Sauve's Statement of Claim was previously struck out on the basis that the allegations were an attempt to relitigate Mr. Sauve's earlier convictions for criminal harassment and were, therefore, an abuse of process. What remains for determination on the pleadings are allegations in tort concerning Mr. Sauve's "detention" on October 8, 2004 and, also the actions of two RCMP officers who served him with a subpoena at the Ottawa Carleton Detention Centre [OCDC] on November 22, 2004. Additionally, as a consequence of the latter event, Mr. Sauve asserts that it was necessary to retain his own legal counsel to protect his legal interests and he seeks additional compensation for the legal fees he incurred.

I. Factual Background

[3] Mr. Sauve worked for more than 18 years with the RCMP as a police officer. He was subsequently dismissed from this employment for conduct connected to the matters in issue in this proceeding. At the root of Mr. Sauve's troubles was an allegation that he had fathered a child with a woman in Quebec. In a paternity proceeding related to that allegation, Mr. Sauve was ordered to provide a DNA sample. He refused to comply and challenged the legality of the court order on appeal. His appeal was unsuccessful and leave to further appeal the matter to the Supreme Court of Canada was sought. It appears that Mr. Sauve was vexed by these proceedings and angry with both the complainant and her legal counsel. As a result, he wrote a letter to the Supreme Court of Canada containing explicit threats of harm to both individuals

(Exhibit D5). This letter quickly came to the attention of the RCMP, and Mr. Sauve's senior officer, Mr. Tremblay, was tasked to investigate.

[4] On October 8, 2004, after reviewing Mr. Sauve's letter, Mr. Tremblay asked Mr. Franche to contact Mr. Sauve and to request his attendance at the detachment office under the pretext of overtime work. Because he believed Mr. Sauve's conduct had potential criminal implications, Mr. Tremblay also asked the Ottawa Police Service to consider that aspect of the matter.

[5] When Mr. Sauve arrived at the detachment office, he was met by Mr. Tremblay, Mr. Franche and Corporal Stephan Demers (now retired). Mr. Demers was brought in by Mr. Tremblay as a member of the RCMP employee assistance program for Mr. Sauve's benefit. A discussion with Mr. Sauve ensued about the content of his letter. Mr. Sauve was asked to surrender his firearm and he did so without complaint. When Mr. Sauve expressed an intention to leave the office, Mr. Tremblay ordered him to stay and he complied. Within the next two hours the Ottawa Police Service arrived and placed Mr. Sauve under arrest. According to Mr. Sauve, Mr. Tremblay acted without lawful authority in ordering him to remain in the detachment office. It is this occurrence that Mr. Sauve alleges constitutes an unlawful detention.

[6] Mr. Sauve was charged by the Ottawa Police Service with two counts of criminal harassment and two counts of uttering death threats. He was placed on remand at the OCDC where he remained for 5 months pending his criminal trial. Because of Mr. Sauve's RCMP status, he was held in protective custody and away from the general inmate population for the duration of his remand. Mr. Sauve was tried in the Ontario Court of Justice and on March 7,

2005, was found guilty of two counts of criminal harassment. The two charges of uttering death threats were dismissed. Mr. Sauve was given a custodial sentence equivalent to the time served on remand and placed on probation for 3 years. He was also banned from possessing a firearm for 10 years. Mr. Sauve's convictions and the sentence were appealed to the Ontario Court of Appeal. That appeal was dismissed on December 14, 2007.

[7] During the period of Mr. Sauve's remand detention, he was held in protective custody. This meant that he was held for 23 hours each day in a segregation cell. Although he was entitled to one hour of daily activity outside of his cell in the presence of other protective custody inmates, it seems that he mostly declined that opportunity.

[8] On November 22, 2004, Constable Stephane Cadieux and Constable Craig Sorrie went to the OCDC to serve Mr. Sauve with a Notice of Production requiring his attendance as a witness to give evidence in an Ottawa criminal trial. Constable Cadieux and Constable Sorrie were escorted to Mr. Sauve's cell where a discussion took place about the need for his attendance. According to Mr. Sauve this meeting effectively "outed" him as a police officer to jail officials and to the inmate population and placed him at personal risk. This is the matter that Mr. Sauve characterizes as negligent. Incidental to this allegation is a claim by Mr. Sauve for reimbursement for the expense of hiring his own lawyer when he gave evidence in the related criminal trial.

II. Analysis

[9] Notwithstanding the evidence tendered in this case by both parties in connection with the underlying civil paternity case and Mr. Sauve's related criminal convictions, I am obliged by law to treat the outcome of those cases as final and determinative. As Justice Anne Mactavish noted in *Sauve v Canada*, 2010 FC 217 at para 32, 186 ACWS (3d) 66, it is not open to this Court to reconsider the matter of Mr. Sauve's criminal conviction. That determination is final. In particular, I have no authority to question the finding of the criminal trial court that Mr. Sauve wrote and delivered Exhibit D5 to the Supreme Court of Canada and that, in so doing, he committed the offence of criminal harassment. The only issue that remains open for determination by me is whether the actions of the Defendants in response to Mr. Sauve's proven misconduct were unlawful and compensable in damages.

[10] Notwithstanding the above evidentiary limitations, Mr. Sauve repeatedly attempted to contradict the findings of the criminal court. In particular, he expressed some doubt about whether he actually authored Exhibit D5 and he categorically denied sending it to the Supreme Court of Canada. Indeed, he accused Mr. Tremblay of sending the letter, motivated by a personal vendetta.

[11] As noted above, these are matters that are relevant only to Mr. Sauve's credibility and, in that regard, his evidence did not assist his cause.

[12] Any fair reading of Exhibit D5 leads to the obvious conclusion that Mr. Sauve was its author and that he was expressing a clear intent to cause harm. Among other passages, the letter contains the following threatening statements:

> I made a promise on my mother's grave, THEY will pay me one way or the other. AND should the courts fail to remedy this situation and stop this harassment and abuse; I will have no other alternative but to take the law into my own hands. One thing is for sure; either the courts are going to send out a clear message that this will not be tolerated OR I will send one very clear and very loud that people will be examining and talking about this case for the next 25 years.
>
> …
>
> **Should the Supreme Court of Canada fail to stop the harassment by these vindictive people and send a clear message that the courts will not be used / abused to get back at someone; I will not have any choice but to take the law into my own hands. Don't worry, if these individuals think that they can destroy my family, abuse my rights, etc... and get away with it; THEY are in for the shock of their lives. I will send a very clear and loud message to them personally that when you criminally frame someone and destroy their lives and others, YOU MUST BE HELD ACCOUNTABLE. And if the courts can't do this; don't worry, I will. There is nothing more you can take away from a person that is ready to die and who has lost everything; namely, his family, pride, all his savings and all he worked all his life for = his 1ife.**
> The only question one should ask themselves; is he stupid enough to go out alone. I only hope that their lives and my life were well worth all of this at the end, which is coming up sooner than we think.

[13] Mr. Sauve's attempt before me to distance himself from these threats was disingenuous. His related testimony was virtually incoherent and it was throughout inconsistent and implausible. He initially said in direct examination that he did not send Exhibit D5 "because I would not have faxed a letter that was a draft" (see p 20 and pp 31-32). Under cross-

examination, he accused Mr. Tremblay of sending the fax (see p 66). His further testimony at pp 67-68 was deliberately evasive:

> Q. This is one of the letters that you composed for the purpose of transmittal to the Supreme Court of Canada
>
> A. No, of course not.
>
> Q. You did not type this --
>
> A. This was not sent to the Supreme Court of Canada. I didn't fax this document.
>
> Q. I didn't say you did. What I'm asking is did you compose this letter?
>
> A. I don't know because there's no signature. My signature is not on here and it's been faxed. It's been faxed from the RCMP drug unit and it's been faxed at a time that I was in the briefing room, so I know for a fact that it was faxed while I was someplace else.
>
> Q. So you're denying authorship of this letter?
>
> A. I'm not denying authorship. This happened how many years ago? But I'm just telling you, if this document was faxed, it's not me that faxed the document.
>
> Q. I'm not asking whether you faxed it at this point. I'm asking whether or not this is a document that you authored. Did you write this?
>
> A. I don't know.
>
> Q. I understood you to say that you acknowledge composing two documents, one which was a draft and one which was intended as a final version - -
>
> A. Correct, yes.
>
> Q. - - to be sent to the Supreme Court of Canada.
>
> A. Yes.
>
> Q. So my question is, are we looking at one of those two documents now?

> A. You've got two questions there.
>
> Q. The document we are looking at now under tab 9, is that the draft that you prepared for transmission - -
>
> A. This appears to be a draft.
>
> Q. Okay. Prepared by you.
>
> A. Possibly by me, yes.

He later attempted to explain away his previous testimony where he had admitted sending Exhibit D5 to the Supreme Court of Canada. He did this by saying that Mr. Tremblay had convinced him of his culpability (see p 75):

> A. I believe that I faxed the document because Larry Tremblay had told me that I had faxed a document to the Supreme Court of Canada. Having looked back at it, it was impossible for me to have faxed the document because the document -- I found the document in my pigeonhole which is in a locked room at the back. Had I faxed that document, I would have had to return to my - - I would have gone to my desk and would have placed this in the desk. The pigeonhole is usually what you remove from, that you receive, not that you go and put in there.
>
> Having said that, I did not fax the document. Somebody else did, and then they put it in the pigeonhole and I then received it. So therefore, you would not walk by your desk and go throw it in a pigeonhole to later retrieve it from your pigeonhole. So I know for a fact that I did not fax that document.

[14] All of the above testimony is inconsistent with Mr. Sauve's evidence in his criminal trial. In that setting, his defence was based on an assertion that the contents of Exhibit D5 and his intent in sending it has been misinterpreted or misconstrued.

[15] Mr. Sauve was not a credible witness. Where his evidence differs from that of other witnesses, I reject Mr. Sauve's version. Fortunately, there are not many points of relevant evidence where there was much disagreement among the witnesses.

[16] I accept that Mr. Sauve's attendance at the RCMP detachment on October 8, 2004 was obtained by pretext and that, after his arrival there, he was ordered by Inspector Tremblay to surrender his firearm and to remain in the office. I also accept that, until the arrival of the Ottawa Police Service, Mr. Sauve was not formally warned, arrested or spoken to regarding his Charter rights. In the meantime, Mr. Sauve was asked about Exhibit D5 by Mr. Tremblay and he offered an explanation. Notes of that discussion were made by both Mr. Tremblay and Mr. Franche. I also accept that Constables Sorrie and Cadieux attended at Mr. Sauve's protective custody cell on November 22, 2004 and discussed with him the need for his witness testimony in a pending criminal trial. It would have been apparent to anyone who overheard their discussion that Mr. Sauve was a police officer.

[17] The above facts provide the foundation for Mr. Sauve's assertion of a claim to civil damages.

[18] Mr. Tremblay gave the following compelling testimony justifying his decisions and explaining the authority under which he acted (see pp 75–77):

> Q. Chief Superintendent Tremblay, just a few questions by way of follow up to questions that my friend asked you.
>
> My friend asked you a question to more or less why you felt it necessary to call Gary Sauvé into the office pursuant to a

guise, that is, not the real reason why you wanted him to attend in the office but the reason that you gave.

I want to follow up on that. What were your concerns in not giving Gary Sauvé the real reason for having him attend?

A. Public safety. My reason for calling him into the office is I had come to the understanding that there was a possible threat to himself and others and I wanted to immediately mitigate that threat. Using a guise to bring him into the office increased the likelihood that he would come to the office with his weapon without incident.

Q. Do I take it from that that you had a concern that if you had not used the guise, there might have been another consequence or another result?

A. Absolutely.

…

Q. In that regard did your rank have any role in this? Did your rank relative to Mr. Sauvé have any sort of - - did that play a role in your consideration?

A. My position as his line officer gave me the authority to (a) cal1 him to the office, (b) gave me the authority under the RCMP Act to remove his weapon and gave me the authority to inform him that he was not to leave the office until such time as we were satisfied that the matter had been dealt with.

Q. In meeting with Mr. Sauvé in the office in the boardroom where you did meet, my friend suggested to you that by virtue of asking the questions you were asking him and making a notation of them that you were in effect taking what she technically referred to as a police statement. Is that what you were doing?

A. No, it's not. I've got 30 years of experience as a policeman. If I wanted to take a police statement, I would have given rights, Charter, police warning and then taken a statement.

My purpose in engaging in Constable Sauvé was more to gain a better understand of the immediate threat, nothing else.

[19] Mr. Tremblay acted prudently in bringing Mr. Sauve into the detachment office. The use of the pretext of overtime to obtain Mr. Sauve's cooperation was reasonable because of a very legitimate concern that if Mr. Sauve was forewarned he might not come in. Mr. Sauve's emotional stability was clearly in doubt given the explicit threats set out in his letter. I do not agree with Ms. Letourneau that these concerns were unwarranted because the threat was subject to the "condition precedent" that it would only be carried out if Mr. Sauve did not get his way in the pending appeal. The suggestion that any attribution of common sense and restraint ought to have been afforded to Mr. Sauve in the face of his attempt to intimidate the Court and the others involved in his family law case is unwarranted. Mr. Sauve had threatened to take the law into his own hands and he expressed an unambiguous intent to harm himself and others against who he harboured grievances. Mr. Tremblay had every right to assume that Mr. Sauve's threats were real and that he intended to act on them sooner rather than later. Mr. Tremblay did not enjoy the luxury of taking his time to reflect on supposed nuances in Mr. Sauve's letter. Indeed it would have been negligent for Mr. Tremblay to have acted with less vigilance or concern for public safety than he did. His duty was to take Mr. Sauve's threats at face value and to ensure that Mr. Sauve was not in a position to carry them out. He had a responsibility to obtain Mr. Sauve's attendance and cooperation and, in particular, to secure Mr. Sauve's firearm. The best place to execute this mandate was within the controlled environment of the detachment office in the presence of other officers including an employee assistance officer. Mr. Tremblay recognized that Mr. Sauve's threat had potential criminal implications and he appropriately turned that matter over to the Ottawa Police Service for an independent investigation. Mr. Tremblay also understood that the situation carried Code of Conduct ramifications. He had a responsibility to

seek an explanation from Mr. Sauve or, as he put it (see p 63): "[t]his could have been explained. There could be an explanation. Maybe I wasn't aware of all of the facts."

[20] In the face of Mr. Sauve's irrational behaviour and demeanour, Mr. Tremblay ordered him to remain in the detachment. Once again, Mr. Tremblay would have been negligent had he failed to act in this way. By all appearances, Mr. Sauve was mentally unstable and potentially dangerous.

[21] I appreciate Ms. Letourneau's point that Mr. Tremblay's interaction with Mr. Sauve had some potential to cross-over into the Ottawa Police Service investigation. However, I accept unreservedly Mr. Tremblay's stated motive that he was acting in the interests of public safety (including Mr. Sauve's safety) and to afford Mr. Sauve an opportunity to explain what had happened. Mr. Tremblay testified that he was open to an explanation from Mr. Sauve and, had something sufficiently exculpatory emerged, the situation could have turned out differently. This was decidedly not a situation where Mr. Tremblay was attempting to camouflage what was, in reality, a criminal investigation of Mr. Sauve. Furthermore, anything that Mr. Sauve told Mr. Tremblay, Mr. Franche or Mr. Demers could not be used against him in any subsequent prosecution: see section 40(3) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10.

[22] In these circumstances, Mr. Tremblay had the lawful authority under section 40 of the RCMP Act, above, to conduct a disciplinary investigation and under section 40 of the *Royal Canadian Mounted Police Regulations*, 1998 SOR/88-361, to order Mr. Sauve to turn over his firearm and to remain in the detachment until the arrival of the Ottawa Police Service.

[23] According to Mr. Tremblay, Mr. Franche and Mr. Demers, Mr. Sauve was cooperative throughout and he appropriately abided by Mr. Tremblay's administrative order. Mr. Sauve was not, at that point, detained or under arrest. Mr. Sauve simply acquiesced to the order of his superior officer and he cannot now claim that he was detained.

[24] In the face of the evidence of Mr. Tremblay, Mr. Franche, and Mr. Demers, I do not accept Mr. Sauve's testimony that he was physically prevented from leaving the detachment. Indeed, wherever Mr. Sauve's testimony materially differs from that of the other witnesses, I reject his version. Mr. Sauve was evasive and untruthful on several points, most notably about his authorship of Exhibit D5. Before me, he offered a variety of explanations for that letter culminating in the preposterous accusation that it had been sent to the Supreme Court by Mr. Tremblay. Until this trial, Mr. Sauve had never denied that he wrote and sent Exhibit D5 to the Supreme Court. Indeed, he admitted doing so under oath during his criminal trial. When he testified before the Ontario Court of Justice, his defence was solely based on an exculpatory and self-serving interpretation of the language he had used in the letter. Even if I was not bound by the finding of the Ontario Court of Justice, I would not hesitate to find that Mr. Sauve wrote and sent Exhibit D5 to the Supreme Court and I reject his evidence to the contrary.

[25] Even if Mr. Sauve was briefly arrested or detained beyond the authority provided by section 40 of the RCMP Regulations without his consent and in furtherance of a criminal investigation, there was ample legal authority to support such a course of action.

[26] A brief detention of Mr. Sauve for no more than 2 hours to allow for the Ottawa Police Service to undertake its criminal investigation was readily justified under section 42 of the RCMP Regulations to protect those persons Mr. Sauve had threatened, to protect Mr. Sauve or to otherwise preserve the peace. A brief preventative or investigative detention was also justified by common law authority and as generally recognized by section 18 of the RCMP Act, above.

[27] In *R v Mann*, 2004 SCC 52, [2004] SCJ No 49, the Court considered the authority of the police at common law to effect the detention of a suspect for investigative purposes. The Court noted that there is a general police duty to protect life and property and cited United States authority that a limited right of detention exists in connection with "imminent" criminal activity. The nature and extent of the detention is required to be measured and reasonable in the circumstances and weighed against the importance of the public purpose served. The test was described in the following way:

> 34 The case law raises several guiding principles governing the use of a police power to detain for investigative purposes. The evolution of the *Waterfield* test, along with the *Simpson* articulable cause requirement, calls for investigative detentions to be premised upon reasonable grounds. The detention must be viewed as reasonably necessary on an objective view of the totality of the circumstances, informing the officer's suspicion that there is a clear nexus between the individual to be detained and a recent or on-going criminal offence. Reasonable grounds figures at the front-end of such an assessment, underlying the officer's reasonable suspicion that the particular individual is implicated in the criminal activity under investigation. The overall reasonableness of the decision to detain, however, must further be assessed against all of the circumstances, most notably the extent to which the interference with individual liberty is necessary to perform the officer's duty, the liberty interfered with, and the nature and extent of that interference, in order to meet the second prong of the *Waterfield* test.
>
> 35 Police powers and police duties are not necessarily correlative. While the police have a common law duty to

> investigate crime, they are not empowered to undertake any and all action in the exercise of that duty. Individual liberty interests are fundamental to the Canadian constitutional order. Consequently, any intrusion upon them must not be taken lightly and, as a result, police officers do not have *carte blanche* to detain. The power to detain cannot be exercised on the basis of a hunch, nor can it become a *de facto* arrest.

This approach was later discussed in *The Queen v Clayton*, 2007 SCC 32, [2007] SCJ no 32 at paras 40-41:

> 40 The police had reasonable grounds to believe that public safety was at risk, that handguns could be in the possession of those leaving the parking area, and that stopping cars leaving that area could result in their apprehension. The steps taken by the police in this case in stopping the car, based on the information they had, were reasonable and reasonably tailored to the information they had.
>
> 41 In the totality of the circumstances, therefore, the initial detention in this case was reasonably necessary to respond to the seriousness of the offence and the threat to the police's and public's safety inherent in the presence of prohibited weapons in a public place, and was temporally, geographically and logistically responsive to the circumstances known by the police when it was set up. The initial stop was consequently a justifiable use of police powers associated with the police duty to investigate the offences described by the 911 caller and did not represent an arbitrary detention contrary to s. 9 of the *Charter*.

[28] In the circumstances confronting Mr. Tremblay a brief detention of Mr. Sauve pending the completion of the Ottawa Police Service investigation was both prudent and reasonable. Mr. Sauve was told on arrival the reason for his attendance at the detachment. He was ordered to remain in the briefing room, but was not restrained in any way. He was given access to an RCMP employee assistance officer. In the face of Mr. Sauve's involvement in sending a letter to

the Supreme Court threatening suicide and the lives of others, this minimal restriction on his movement was reasonably tailored to the gravity of the risk and it was, therefore, lawful.

[29] Mr. Sauve's second complaint concerns the attendance of two plain-clothes RCMP members at his cell in the OCDC on November 22, 2004. The purpose of this visit was to serve a Notice of Production upon Mr. Sauve to effect his attendance as a witness in a narcotics prosecution trial in Ottawa. Mr. Sauve had been involved in the investigation that led to the prosecution and his attendance to give evidence was requested by the defence lawyer and authorized by the trial judge.

[30] Mr. Sauve's concern is that his previously undisclosed status as a police officer was compromised by this visit, in particular, because the conversation was likely overheard by jail officials and by other inmates. He alleges that on four occasions after this event, he was assaulted by prison guards because of his RCMP employment. He also says that, thereafter, he was constantly terrified because of the prospect of being assaulted by inmates with animus to police officers.

[31] Mr. Sauve alleges that the RCMP acted negligently by exposing him to an increased risk of harm and he seeks damages for associated emotional distress. He does not seek damages *per se* for the alleged injuries he claims to have suffered at the hands of jail officials and he is pursuing a separate civil action against the Province of Ontario for assault.

[32] There are several reasons why Mr. Sauve's claim cannot succeed. Firstly, Mr. Sauve failed to prove that the actions of the RCMP were negligent or that what allegedly occurred was caused by those actions. He also failed to establish that he sustained any compensable injury from this event.

[33] Mr. Sauve maintains that the conversation he had in his cell with Constable Cadieux and Constable Sorrie was likely overheard by jail officials and by nearby inmates. This, he said, put him at an increased risk of harm.

[34] The fact that jail officials could have overheard the discussion is of no legal consequence. They already knew that Mr. Sauve was a member of the RCMP and was being held in protective custody for that reason. While it is not strictly necessary to decide whether Mr. Sauve was ever assaulted by jail officials by virtue of his police status, I would note that he provided no corroboration for those allegations and he failed to articulate any plausible motive for such misconduct.

[35] Constable Cadieux and Constable Sorrie both testified that the discussion that took place in Mr. Sauve's cell on November 22, 2004 was professional and reasonably muted. Mr. Sauve expressed no concern at that time about the visit and freely discussed the details of his anticipated attendance to testify. He asked if he would be able to review his police notes in advance of testifying and he was told that the notes would be available. At the conclusion of the meeting, Constable Sorrie asked Mr. Sauve how he was doing and whether he needed anything. The offer of assistance was declined.

[36] When Constable Sorrie was asked why the meeting with Mr. Sauve did not take place in one of the usual interview rooms, he thought that it was likely arranged that way to avoid parading Mr. Sauve in front of the general inmate population. The Security Manager of the OCDC, Steven Ashdown, gave the same explanation.

[37] The test for establishing negligent police conduct is set out in the following passage from *Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 at para 73, [2007] 3 SCR 129:

> 73 I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. **Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness.** The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made – circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results (*Klar*, at p. 359). Rather, it accepts that police officers, like other professionals, may make minor errors or errors in judgment which cause unfortunate results, without breaching the standard of care. The law distinguishes between unreasonable mistakes breaching the standard of care and mere "errors in judgment" which any reasonable professional might have made and therefore, which do not breach the standard of care. (See *Lapointe v. Hôpital Le Gardeur*, [1992] 1 S.C.R. 351; *Folland v. Reardon* (2005), 74 O.R. (3d) 688 (C.A.); Klar, at p. 359.) [Emphasis in the original]

Mr. Sauve's evidence falls far short of proving that the Defendants were, on the above standard, negligent in conducting a discussion in his cell in the circumstances described.

[38] Mr. Sauve also offered no evidence that any other inmate actually overheard the discussion with Constables Cadieux and Sorrie and his suggestion that it was likely overheard is speculation. Mr. Sauve's situation was also a matter of public notoriety such that, if any inmate was aware of his RCMP employment, the information could just as easily have been obtained from available news reports.

[39] Throughout his incarceration, Mr. Sauve was held in protective custody because of his RCMP status. In the result, he was never directly exposed to the general population of inmates. While in theory, he could have mingled for an hour each day with the other inmates in protective custody, the evidence indicates that he declined that opportunity. Although Mr. Sauve was double-bunked with another protective custody inmate for a few weeks, that decision was made by jail officials and not by any of the Defendants. Mr. Sauve provided no evidence that this inmate was aware of his RCMP status and the bunking arrangement was ultimately ended at the request of Mr. Sauve's lawyer.

[40] I have no doubt that Mr. Sauve's time in custody was difficult for him. He was confined to his cell for at least 23 hours each day and had virtually no direct interaction with others for the duration of his time in custody. But that situation was a consequence of the criminal charges he faced and of the lawful custodial decisions that were made by court and jail officials. Mr. Sauve was held in protective custody because his safety could not be assured within the general inmate

population. The custodial decisions taken by jail officials appear to me to be prudent and necessary but, in any event, the Defendants in this proceeding bear no legal responsibility for those decisions.

[41] There was evidence from Mr. Sauve's family physician, Dr. David Burt, that after his release Mr. Sauve complained of symptoms consistent with post-traumatic stress disorder. I accept that, as a police officer, Mr. Sauve suffered considerable stress from his time in custody. But, again, that situation resulted from his lawful detention and from the particular hardships protective custody imposed upon him. The innocuous meeting with Constable Cadieux and Constable Sorrie does not support a separate allocation of emotional distress from the distress that was already inherent to the detention itself.

[42] For the foregoing reasons, this action is dismissed. The matter of costs is reserved pending receipt of written submissions from counsel for the parties. Those submissions are to be filed and served within seven days and are not to exceed five pages in length.

JUDGMENT

THIS COURT'S JUDGMENT is that this action is dismissed. The matter of costs is reserved pending further submissions from counsel for the parties.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1752-06
STYLE OF CAUSE:	GARY SAUVE v HER MAJESTY THE QUEEN, IN RIGHT OF CANADA,, MARC FRANCHE (RCMP),, LARRY TREMBLAY (RCMP)
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	DECEMBER 1 TO 5, 2014
JUDGMENT AND REASONS:	BARNES J.
DATED:	JANUARY 16, 2015

APPEARANCES:

Cheryl Letourneau	FOR THE PLAINTIFF
Helene Robertson Patrick Bendin	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Bertschi Orth Ottawa, ON	FOR THE PLAINTIFF
William F. Pentney Deputy Attorney General of Canada Ottawa, ON	FOR THE DEFENDANTS