

Neighbours liable for defamation, malicious prosecution and intentional infliction of mental distress (Khan v. Bujold)

Defamation | Litigation | Litigation & Dispute Resolution | Police Services Act

11 December 2023

In *Khan v. Bujold*, 2023 ONSC 6618 (CanLII), the Ontario Superior Court of Justice awarded the plaintiff damages against his neighbours for defamation, malicious prosecution, and intentional infliction of mental distress, after a prolonged feud.

In 2015, the plaintiff, a police officer who had also served a tour of duty in Afghanistan, moved into his house on a quiet street in an Ottawa suburb. He initially got on well with his neighbours and shared the cost of a backyard fence and landscaping. However, this harmony was short-lived.

Problems began when the plaintiff accused his neighbours of stealing river stones delivered for installation in the shared walkway. He installed exterior security cameras as a general security measure.

The neighbours believed they were unfairly targeted and complained to the by-law office about the cameras. This led to an angry, profanity-laced confrontation.

Top of Form

The neighbours filed complaints against the plaintiff under the Code of Conduct of the [Police Services Act](#), claiming that he threatened them and used his power to interfere with their privacy. The plaintiff admitted that he swore and yelled after learning they had filed a complaint about him.

The Office of the Independent Police Review Director eventually determined that the plaintiff's conduct was discreditable. However, it characterised the misconduct as a "less serious nature," and there was no evidence that the plaintiff had ever misused his power as a police officer in his interactions with the neighbours or had threatened to do so.

Incidents continued thereafter. The plaintiff complained to the city by-law department about work that the neighbours were doing that caused dirt to accumulate on his driveway.

The neighbours installed a camera on top of a pole attached to the parties' shared backyard fence that was pointed directly at a hot tub in the plaintiff's backyard. The camera turned out to be fake.

A local Ottawa newspaper then published an article about the outcome of charges laid against the plaintiff for impaired and dangerous driving. In comments posted on Facebook to an online version of the article, one of the defendants' neighbours stated: "POWER DIRTY COP, [...] unfortunately we are his nextdoor neighbor. He has put our life through hell. Please google his name and you will see his history, this is the kind of officer we have to protect our community."

After the plaintiff commenced a civil action against the neighbours, they applied for a peace bond against him under [section 810](#) of the [Criminal Code of Canada](#). The application for a peace bond was dismissed.

Eventually, the civil dispute went to trial in June 2023. The trial took 10 days.

The central question was whether the defendants crossed the line from unneighbourly behaviour to tortious acts. The plaintiff alleged that his neighbours knew that he suffered from Post Traumatic Stress Disorder (PTSD), anxiety and other psychological conditions, and they acted to deprive him of any enjoyment of his property, to derail his career as a police officer, to ruin his reputation, and to cause a criminal procedure to be initiated against him.

In their defence, the neighbours contended that they had done nothing that could attract civil liability. They argued that the plaintiff's complaints were baseless or trivial and that they acted only to defend themselves in this lawsuit. They also advanced their own set of grievances, although they did not commence a counter-claim.

With regard to the defamation claim, the trial judge determined that the online comment posted by the neighbour was defamatory under the principles of *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII) because a person reading it would reasonably infer that the plaintiff, as a "power dirty cop," used his position or authority as a police officer for personal advantage.

The neighbours' defence of justification was rejected since there was no evidence that the plaintiff abused his power as a police officer for personal gain. Their defence of fair comment also failed because the post would not reasonably be understood to be an opinion or based on fact.

The plaintiff was awarded damages of \$10,000 for defamation due to the seriousness of falsely accusing a police officer of using his position and power against his neighbours. The neighbour never apologized for or retracted the online statement. The Facebook post was shared 52 times, and there was no way to tell how many people read the original online post.

The trial judge also held that the plaintiff proved the tortious act of malicious prosecution, based on the requirements outlined in *Nelles v. Ontario*, 1989 CanLII 77 (SCC):

- a. The defendant initiated proceedings against the plaintiff;
- b. The proceedings were terminated in favour of the plaintiff;
- c. There was no reasonable and probable cause for the proceeding; and
- d. The defendant was actuated by malice, or a primary purpose other than the carrying of the law into effect.

The first and second criteria were readily made out as the defendants applied for a peace bond against the plaintiff under the *Criminal Code*, and the application was dismissed. The third leg of the test was also made out as the plaintiff proved that his neighbours lacked a reasonable and probable cause for the peace bond application. In the trial judge's view, there was no objectively reasonable basis for the neighbours to fear for their personal safety or the safety of their property, as a person who was allegedly afraid would not stand in their backyard, openly take videos of their alleged aggressor or make defamatory statements about them online.

The trial judge was satisfied that the neighbours were motivated by malice and desire for revenge since they were upset that the plaintiff had sued them. Although the peace bond application was part of a larger campaign by the neighbours against the plaintiff, it was by itself an actionable wrong. The trial judge stated: "The weaponization of the criminal justice system against an individual cannot be condoned, particularly where the target is vulnerable due to his job and his psychological state."

The plaintiff was awarded modest damages of \$5,000 for this tort, as he was not taken into custody or charged with any offence, and he did not single-out the peace bond application as a specific source of stress in his discussions with his health care providers.

Lastly, the trial judge found that the neighbours were liable for intentional infliction of mental distress. A defendant is liable for this tort if they: (1) engage in flagrant and outrageous conduct; (2) that conduct is calculated to produce harm; and (3) it results in a visible and provable injury such as a recognized psychiatric illness: *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419, at paragraph 41; *Prinzo v. Baycrest Centre for Geriatric Care* (2002), 2002 CanLII 45005 (ON CA).

The trial judge held that the neighbours had engaged in flagrant and outrageous conduct that was calculated to produce harm. The neighbours knew that the plaintiff suffered from PTSD and that he would be upset by being recorded. Any reasonable person would be outraged at learning that their neighbours were deliberately recording them in a backyard hot tub.

The plaintiff testified that he came under significant stress due to the neighbours' conduct. He developed sleep disorders, nightmares and acid reflux, and had to attend local emergency rooms twice. The impact of the neighbours' conduct was corroborated by evidence from the plaintiff's treating physicians. However, his current symptoms were not uniquely attributable to his interactions with the neighbours and his PTSD was affected by other events.



The trial judge, therefore, concluded that the plaintiff was entitled to modest general damages for intentional infliction of mental distress of \$10,000.

Living in close proximity to someone you dislike or distrust is inherently stressful. But as demonstrated in this case, damages may arise when some lines are crossed. That said, seeking the court's intervention in neighbour disputes is not a quick or inexpensive endeavour. The decision at hand resulted in a total damages award of \$25,000, after five years of litigation and a ten-day trial. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Authors



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Mryam Sarkis



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com