

Federal Court



Cour fédérale

Date: 20150611

Docket: T-996-09

Citation: 2015 FC 739

Ottawa, Ontario, June 11, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

GARY SAUVE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

[1] The plaintiff, Gary Sauve, originally brought an action for damages against the federal Crown claiming general damages for loss of identity; loss of reputation, loss of integrity and dignity; humiliation, degradation and embarrassment; loss of income and future income; loss of enjoyment of life, loss of mobility, loss of guidance, care and companionship of his family and friends; emotional trauma, pain and suffering, migraines, loss of sleep, nightmares of traumatic events; stress, anxiety and worry; harassment, intimidation, intrusion upon the plaintiff's seclusion or solitude and invasion of privacy.

[2] Most of the plaintiff's statement of claim was struck out by an order dated October 6, 2009 (2009 FC 1011) in which Justice Mainville found that all of the issues in the statement of claim which were identical or similar to the issues set out in the plaintiff's statement of claim in file T-1646-08 should be stricken out as an abuse of process. However, some paragraphs concerning the plaintiff's claims with regards to issues related to alleged unlawful or abusive surveillance, invasion of privacy and harassment were not stricken out and remain before the Court today.

[3] The plaintiff is a former member of the RCMP who has filed numerous actions in this Court against the RCMP with regards to various allegations including harassment, wrongful acts and breaches of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*. A factual background of the events leading to the plaintiff's dismissal can be found in a recent decision of this Court: *Sauve v Canada*, 2015 FC 66 at paras 3 to 8, and the plaintiff's history before this Court has been generally summarized in an order by Chief Justice Crampton: *Sauve v Canada*, 2014 FC 119.

[4] In this case, the plaintiff makes three main factual allegations that he argues constitute torts. First, the RCMP served documents or made attempts to serve documents on the plaintiff personally on multiple occasions at his residence and at other locations. Second, the RCMP attempted to entrap the plaintiff by using an RCMP informant to attempt to sell him a gun. Third, the RCMP conducted surveillance of the plaintiff.

[5] During the relevant period, the plaintiff resided in various locations, with friends as well as with Lorraine Séguin, the plaintiff's ex-partner, who has a house in Navan. For the purposes of these reasons, Ms Séguin's house will be referred to as the "Navan residence."

THE EVIDENCE BEFORE THE COURT

[6] The Court considered all relevant evidence submitted by the parties, including an agreed statement of facts, all three volumes of the joint books of documents, and the testimonies of the plaintiff, Ms Séguin, Staff Sergeant Gagnon and Constable Pion.

First allegation: personal service of documents

[7] With regards to the first allegation, the parties filed an agreed statement of facts which establishes the following facts.

[8] On October 14, 2004 and on January 29, 2005, the plaintiff was personally served with documents. During that period, he was in custody.

[9] On January 19, 2007, the RCMP served a document personally on Stephanie Mulcaster, the plaintiff's lawyer.

[10] During the disciplinary hearing process, lawyer Jean-Daniel Hacala represented the Commanding Officer and he instructed RCMP officers to personally serve on the plaintiff the documentation he had assembled. Staff Sergeant Guy Gagnon and Corporal Yves Mainville were

tasked with effecting personal service. They were instructed not to leave the documentation with Ms Séguin, nor to leave the documentation at the Navan residence or mail it.

[11] On October 27, 2008, Staff Sergeant Gagnon emailed Ms Mulcaster to inform her that he was having difficulty reaching the plaintiff to personally serve him with documents. Ms Mulcaster replied that she could not assist with service as she did not have the express instruction to do so.

[12] In November 2008, Staff Sergeant Gagnon and Corporal Mainville made three attempts to serve documents on the plaintiff at his residence. On the first attempt, no one answered the door and on the other two attempts, Ms Séguin answered the door and informed the officers that the plaintiff was not home.

[13] On December 3, 2008, Corporal Mainville and Corporal Lee Côté met the plaintiff in the parking lot of the Pizza Pizza on Hazeldean Drive and served him with documents.

[14] Between March and September 2009, Staff Sergeant Gagnon and Corporal Mainville served the plaintiff with documents in the Federal Court lobby at 90 Sparks Street on three different occasions. On March 19 and on September 10, 2009, the plaintiff accepted service of the documents. However, on June 25, 2009, the plaintiff refused to accept service and he told the RCMP officers that they continue to harass, intimidate and threaten him.

[15] On November 21, 2009, Staff Sergeant Gagnon and Corporal Mainville attended the Navan residence to personally serve him with documents. Ms Séguin opened the door and indicated that the plaintiff was not there.

[16] On January 2, 2010 at 10:30 a.m., Staff Sergeant Gagnon and Corporal Mainville attended the Navan residence to personally serve him. Ms Séguin informed them that the plaintiff was not there and they indicated to her that they had attempted service numerous times and that the plaintiff was avoiding service. Staff Sergeant Gagnon and Corporal Mainville returned to their vehicle and remained parked in front of the house until 11:30 a.m.

[17] Between January 7 and January 12, 2010, various uniformed RCMP members made six attempts to serve documents on the plaintiff at his residence but on all of these occasions, no one answered the door. On a few of these occasions, the RCMP members also checked the rear of the residence, including knocking on the rear door, made observations about the house, and on one occasion, an RCMP member shone his flashlight in the upper level windows of the house and noticed a man quickly retreating but could not identify the person because of the darkness.

[18] On January 12, 2010, the plaintiff contacted Staff Sergeant Gagnon to tell him to stop conducting surveillance at his residence and to serve any documents on him at his future court appearances.

[19] On January 15, 2010, Corporal Peleja informed Constable Michael Esslinger that he would be personally serving the plaintiff with documents and told him that the plaintiff was

reported to have a long gun in his possession, this having been seen through his window by an RCMP member, who was the plaintiff's neighbour. This information was not correct. The neighbour of the Navan residence, Sergeant Greg Fedor, had never seen a long gun inside the Navan residence and had not reported to the RCMP that the plaintiff possessed a long gun.

[20] On January 15, 2010, Constables Peter Woolley and Esslinger attended the Navan residence to personally serve the plaintiff with documents. The plaintiff answered the door but he refused service of the documents and indicated that he would be in court on January 18, 2010 and that the RCMP could attempt service then. The plaintiff told the officers not to attend his residence again.

[21] On January 18, 2010, Staff Sergeant Gagnon and Corporal Mainville attempted to personally serve the plaintiff with documents at 90 Sparks Street, as he had requested, but the plaintiff refused to accept service.

[22] From January 25 to January 28, 2010, an Adjudication Board constituted pursuant to Part IV of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMP Act*] conducted a disciplinary hearing into allegations against the plaintiff and made the decision to dismiss the plaintiff. According to the RCMP, the decision was personally served on the plaintiff on April 8, 2010. According to the plaintiff, he was not served with the decision.

Second allegation: attempt by an informant to sell a gun

[23] With regards to the second allegation, the plaintiff testified to the following facts. On March 21, 2005, while he was suspended from his employment at the RCMP, the plaintiff received a page on his RCMP pager from an informant asking the plaintiff to call him. According to the plaintiff, that individual was a coded informant with the RCMP and prior to the plaintiff's detention in October 2004, the plaintiff spoke to this informant on a weekly basis. The plaintiff testified that when he spoke to the informant, the informant told him he had a gun to sell for \$300. After some coaxing from the plaintiff, the informant told him that the gun had been given to him by the RCMP who had asked him to sell it to the plaintiff. The plaintiff also provided some pages of his personal notebook which relate to the conversation he had with the informant. According to the plaintiff, the notes are not verbatim. The plaintiff taped the conversation but he lost the tape.

[24] Staff Sergeant Gagnon also testified to those allegations and denied that the RCMP had asked an informant to sell a gun to the plaintiff. According to Staff Sergeant Gagnon, the informant had been deactivated by the RCMP sometime in 2004 and was certainly no longer an RCMP informant in March 2005. In addition, because he was responsible of the Confidential Human Sources unit, Staff Sergeant Gagnon would have had to personally negotiate with the informant to draft his role and the expectations. According to Staff Sergeant Gagnon, never in his career has a gun been given by the RCMP to an informant and the immunity provision would not apply to that.

Third allegation: surveillance on the plaintiff

[25] On the third allegation relating to surveillance, the plaintiff testified that during the period between 2005 and 2010, he was subject to multiple incidents where the RCMP conducted surveillance on him. The plaintiff testified that because of his experience with the RCMP, he was familiar with surveillance techniques and could identify when he was being followed or the subject of surveillance at his residence. The plaintiff also provided excerpts from his personal notebook where he took notes about various incidents. In their testimonies, both Constable Pion and Staff Sergeant Gagnon indicated that, to their knowledge, the RCMP had not conducted surveillance on the plaintiff. Constable Pion specifically denied conducting surveillance on the plaintiff.

[26] According to the plaintiff, there were a few incidents in November 2005, including on the 17, the 21, the 24, the 25 and the 30. During those incidents, the plaintiff noticed cars parked close to the Navan residence, in a traditional observation point position that has a direct line of sight on the residence, and he was also followed by one or multiple cars when he left the residence. The plaintiff explained that there are only two houses on the street where the residence is. The plaintiff's testimony and notes were to the effect that there were multiple similar incidents in the following years.

[27] In his testimony, the plaintiff also detailed a few incidents of particular importance, some of which were corroborated by Ms Séguin in her testimony. On June 6, 2006, the plaintiff went to an appointment at the RCMP medical office. The plaintiff felt he was being followed but was not positive. After leaving the medical office, he went to the TD Bank on Innes Road. Right after

entering the bank, he noticed he had forgotten his card in the car and turned around to go get it. When he exited the bank, two RCMP officers, that the plaintiff identified as Michel Charon and an officer whose first name is Dan, were walking in the bank. When they saw the plaintiff, they stopped dead in their tracks and then took off around the bank. The plaintiff also referred to his notes which indicate that he walked straight to the vehicle he believed to be the RCMP surveillance vehicle where an officer he knew was pretending to write something in a book. The plaintiff waved at him and made signs for several minutes, and the officer started laughing. The plaintiff got back in his vehicle and drove around the back, where he saw that the first two officers were still there, and then he left. The defendant did not produce these officers as witnesses.

[28] The plaintiff also believes that the landline at his Navan residence was tapped on March 14, 2007. He testifies that he saw a brown SUV with no identification parked at the Bell box. During that day, the phone rang really low all day but there was no registered number calling, which the plaintiff testified was a sign that the phone was being tested or calibrated. The plaintiff testified that he called Bell which told him that only they would have access to that box. According to the plaintiff, he confirmed that the phone was tapped afterwards by mentioning meetings to friends using the landline and then using counter-surveillance which confirmed that he was the subject of surveillance whenever he mentioned a meeting over the phone. In his testimony, Staff Sergeant Gagnon explained that to his knowledge, a wiretap has never been put on the plaintiff. A warrant would have been necessary and a high threshold has to be met for that to be available. According to him, the wiretapping is done through the phone companies and there would be no need to go to the Bell box. In his testimony, Constable Pion explained that it is

the investigation section that requests a wiretap and before doing so, they must have the surveillance unit doing traditional surveillance for long enough to demonstrate that a wiretap is necessary because surveillance is not possible on the target.

[29] On August 24, 2008, four vehicles followed the plaintiff, Ms Séguin and their son from the Navan residence to a Canadian Tire store, one of which parked in an observation point position in the parking lot. An individual who got out of that car and walked into the store was recognized by the plaintiff as a police officer, and so was a second individual whom he recognized inside the store. When he left the store, the plaintiff used a counter-surveillance technique on Trim Road by parking at the bottom side of a hill, and the same car that they had seen earlier came up behind them. The plaintiff provided pictures which he indicated were pictures of the cars following them taken by his son on a cell phone. Following that incident, the plaintiff checked the registration of the plates with the Ministry of Transport and they came back as unfound, which according to the plaintiff, will be the result if the vehicles are RCMP vehicles.

[30] On June 17, 2009, the plaintiff picked up his son at school and they went to Staples where they separated. The plaintiff testified that an individual jumped out of a car with photography equipment and an ear piece, and that individual got really close to his son in the store, to the point where a store clerk came to inform him. At that point, the plaintiff and his son left the store and drove off in their car, but the plaintiff simply came back around and parked in front of the store. There, he saw the individual come out of store and talk in his mike in the middle of the road. That individual walked across the parking lot to The Source where the plaintiff followed him. In The Source, the plaintiff overheard the individual say he wanted to sell

his camera and heard the clerk reply that it was a brand new camera. Afterwards, the individual walked along Innes Road and took pictures of the metal structures. The plaintiff followed in his car and parked in a church parking lot. The individual walked into the church parking lot and through to the pathway that leads to Nesting Way. The plaintiff then drove around to Nesting Way, where he saw the individual ring the doorbell to a house, and the door opened immediately and the individual went inside the house. Afterwards, the plaintiff left and later came back. After coming back, he saw the individual leave and be picked up by a vehicle similar to the one seen in the parking lot of the Staples. The plaintiff also provided pictures of that individual and of the car in the Staples parking lot.

[31] The plaintiff also referred to an incident in a Superstore involving Constable Pion. The plaintiff testified that he had lost the notes on that incident, but that it probably happened during the summer months of 2009, which was also corroborated by Ms Séguin, even though she did not have an exact date either. The plaintiff testified that while he was going through the checkout at the cash, he noticed Constable Pion looking at him from a few cashes over. The plaintiff walked over to confront him but Constable Pion dove under the cash. Ms Séguin testified that he had ducked down between two cashes. The plaintiff then tapped him on the shoulder, to which Constable Pion did not react, until the plaintiff asked the clerk to call the store manager. The plaintiff testified that when the manager got there, Constable Pion jumped up, said hello and walked out the store. Ms Séguin testified that Constable Pion jumped up as soon as the plaintiff asked the clerk to call the manager and that the manager was never actually called. Ms Séguin could not identify the individual as she does not know Constable Pion, but she indicated that the plaintiff had told her it was Constable Pion. In his testimony, Constable Pion indicated that it was

possible that he ran into the plaintiff at a Superstore, but that he had no memory of it. Constable Pion testified that if he had met the plaintiff, it would not have been in the context of conducting surveillance on him as he had never conducted surveillance on him. Constable Pion added that he knows the plaintiff since more than 25 years ago and that it would have been impossible for him to conduct surveillance on the plaintiff as the plaintiff would have recognized him. Constable Pion also testified that for all of 2009, he was not in the surveillance unit but rather in the counter-surveillance unit.

[32] The plaintiff also indicated that he was pulled over between 10 and 15 times by police officers who told him he was under investigation by the RCMP, including being pulled over three times by the same officer who told him “It’s not me, by the way.”

ANALYSIS

[33] During her closing statements, plaintiff’s counsel explained that two torts are alleged here: the invasion of privacy tort of intrusion upon seclusion and trespass. Counsel indicated that she knew that harassment was not a tort *per se*, but asked the Court to consider the incidents of harassment, including the incident with the gun, as part of a course of conduct by the RCMP that invaded the privacy of the plaintiff.

[34] The tort of intrusion upon seclusion was accepted by the Ontario Court of Appeal in the decision of *Jones v Tsige*, 2012 ONCA 32 [*Jones*], where the Court adopted the formulation for intrusion upon seclusion found in the American *Restatement (Second) of Torts* (2010):

One who intentionally intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the invasion would be a highly offensive to a reasonable person.

[35] The three elements of intrusion upon seclusion are: (1) that the defendant's conduct must be intentional or reckless; (2) that the defendant must have invaded without lawful justification the plaintiff's private affairs or concerns; and (3) that a reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish (*Jones*, above at para 71).

[36] In Ontario, the offence of trespassing is defined in the *Trespass to Property Act*, RSO 1990, c T.21:

2. (1) Every person who is not acting under a right or authority conferred by law and who,
 - (a) without the express permission of the occupier, the proof of which rests on the defendant,
 - (i) enters on premises when entry is prohibited under this Act, or
 - (ii) engages in an activity on premises when the activity is prohibited under this Act; or
 - (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,
- is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

[37] The elements of the tort of trespass in Ontario can be found at paragraph 86 of *Grace v Fort Erie (Town)*, [2003] OJ No 3475, 2003 CanLII 48456 (ONSC) where the Ontario Superior Court indicated that these elements are:

- * Any direct and physical intrusion onto land that is in the possession of the plaintiff (indirect or consequential interference does not constitute trespass).
- * The defendant's act need not be intentional, but it must be voluntary
- * Trespass is actionable without proof of damage.
- * While some form of physical entry onto or contact with the plaintiff's land is essential to constitute a trespass, the act may involve placing or propelling an object, or discharging some substance onto the plaintiff's land can constitute trespass.

[38] Essentially, “[a]ny intrusion upon another person's land constitutes trespass if it is not justified by law” (Halsbury's Laws of Canada (Online), *Torts*, at HTO-19 “Categories of Trespass”).

[39] According to the plaintiff, the incidents of service of documents constitute both intrusion upon seclusion and trespass. The plaintiff argues that the RCMP officers physically invaded his property and invaded his private affairs, and that repeatedly attending his residence is not authorized by law. According to the plaintiff, the *RCMP Act* and *Royal Canadian Mounted Police Regulations, 1988*, SOR/88-361 [*RCMP Regulations, 1988*] did not provide for multiple attempts to personally serve the plaintiff at his residence. Subsection 47.2(1) of the version of the *RCMP Act* in force at the time of the incidents of service provided that:

47.2 (1) Subject to subsection (2), any notice, decision or other document required by this Act to be served by a person or a board shall be served by or on behalf of that person or board personally on the person to whom the notice, decision or document is directed.

47.2 (1) Sous réserve du paragraphe (2), la signification à personne s'impose à l'égard de tout avis, décision ou autre document qu'une personne ou une commission doit signifier en vertu de la présente loi.

[40] Section 27 of the *RCMP Regulations, 1988* provides for personal service as well as alternative means of service in certain circumstances:

27. (1) Any notice, decision or other document required by these Regulations to be served on a person shall be served personally on the person, except that any notice, decision or other document required by these Regulations to be served by a person, an administrative discharge board or a medical board on the Commissioner or an appropriate officer is sufficiently served if it is sent by or on behalf of the person, administrative discharge board or medical board by prepaid first class mail addressed to the Commissioner or appropriate officer, as the case may be.

(2) Personal service constitutes leaving a copy of the notice, decision or other document with the person.

(3) Where more than one unsuccessful attempt has been made to personally serve a notice, decision or other document on a member, the notice, decision or other document may be served by enclosing a copy thereof in a sealed envelope addressed to that member and leaving it with any person who appears to be an adult and an occupant of the dwelling in which the member is residing, or by mailing a copy thereof to the person at that address.

27. (1) La signification à personne s'impose à l'égard de tout avis, décision ou autre document dont le présent règlement exige la signification. Toutefois, dans le cas d'un avis, d'une décision ou d'un autre document qu'une personne, un conseil de renvoi par mesure administrative ou un conseil médical est tenu de signifier, aux termes du présent règlement, au Commissaire ou à l'officier compétent, est valable la signification par courrier affranchi au tarif de première classe et adressé au Commissaire ou à l'officier compétent, selon le cas.

(2) La signification à personne consiste à remettre au destinataire en mains propres une copie de l'avis, de la décision ou du document.

(3) Lorsque plus d'une tentative de signification à personne a échoué, la signification de l'avis, de la décision ou du document peut être effectuée par la remise d'une copie de celui-ci, insérée dans une enveloppe cachetée et adressée au destinataire, à toute personne à la résidence du destinataire qui semble être adulte et y résider, ou par l'envoi d'une copie par la poste à la même adresse.

(4) Where a person refuses to accept a notice, decision or other document required to be served personally, personal service is considered to have been effected at the time of the refusal, if the person attempting service	(4) Lorsqu'une personne refuse de recevoir un avis, une décision ou un autre document qui doit être signifié à personne, la signification à personne est réputée avoir été faite au moment du refus si la personne chargée de la signification :
(a) records the refusal on the notice, decision or other document; and	a) d'une part, inscrit le refus sur l'avis, la décision ou le document;
(b) leaves a copy of the notice, decision or other document with the person, by any reasonable means.	b) d'autre part, laisse une copie de l'avis, de la décision ou du document au destinataire par tout moyen raisonnable.
[...]	[...]

[41] According to the plaintiff, after the first attempt at serving the plaintiff personally, the officers should have mailed the documents or left them with Ms Séguin at the Navan residence. The plaintiff argues that it could not have been the intention of the legislature to have people attending an individual's residence multiple times, but here, the RCMP officers were specifically ordered to hand the documents personally to the plaintiff, instead of following the alternative modes of service provided for by subsection 27(3) of the *RCMP Regulations, 1988*. According to the plaintiff, the RCMP's conduct constitutes both trespass and intrusion upon seclusion. With regards to intrusion upon seclusion, the conduct was intentional and invaded the private affairs of the plaintiff without lawful justification, and a reasonable person would have found the conduct highly offensive. With regards to trespass, the RCMP officers invaded the Navan residence with

no lawful justification. During closing arguments, Counsel for the plaintiff indicated that no tort was alleged for the incidents of service at the Federal Court.

[42] According to the defendant, neither the tort of trespass nor of intrusion upon seclusion have been proven by the plaintiff. First, all of the actions of the RCMP were taken to comply with subsection 47.2(1) of the *RCMP Act*. Second, the plaintiff has a history of evading service and has no fixed address as he rotates between four locations. In that context, the RCMP could not leave the documents with Ms Séguin or send them by mail to the Navan residence or to another address. In addition, though Counsel for the plaintiff indicated that there would be no problem of proof if the service was not done personally, there is already one documented incident where Inspector Côté swore an affidavit that he had served the plaintiff with a document, while the plaintiff swore an affidavit saying that he had not been served, which shows that the RCMP had to serve him personally. With regards to intrusion upon seclusion, the defendant acknowledges that the RCMP's conduct was intentional, but argues that the conduct was justified by law and is not highly offensive to a reasonable person. With regards to trespass, the defendant argues that the plaintiff does not have the standing to bring an action of trespass since he is not a person in possession of the property, as he resides at four different locations, and has neither property nor leasehold in the Navan residence.

[43] I agree with the defendant. The RCMP's service of documents did not constitute a tort. With regards to intrusion upon seclusion, neither the second nor third criteria are met. In general, the RCMP's conduct was lawful and was taken to comply with subsection 47.1(1) of the *RCMP Act*. Subsection 27(3) of the *RCMP Regulations, 1988* does provide alternative modes of service,

but using these modes is not mandatory (“document *may* be served”) and the plaintiff’s history of evading service and lack of fixed address justified the RCMP’s decision to only effect personal service. However, there were a few incidents in January 2010 where the RCMP officers went further than what is lawfully justified in attempting to personally serve the documents on the plaintiff, both by checking the rear of the residence and by looking inside the house, including shining a flashlight in the windows. Nonetheless, neither those incidents nor the other incidents of service would be highly offensive to a reasonable person as they constitute appropriate behaviour in attempting to serve someone personally.

[44] Concerning the tort of trespass, I agree with the defendant that the plaintiff has no standing to bring an action for trespass for the Navan residence. The fact that it is one of the four locations where he resides is not sufficient to constitute possession. From the evidence provided, the plaintiff was simply a guest in the Navan residence and he had none of the attributes of possession. He was certainly not exercising exclusive occupation of the land, such as the owner or a tenant. His situation was similar to that of a guest in a hotel room or a live-in nanny (Philip Osborne, *The Law of Torts*, 3rd ed (Toronto: Irwin Law, 2007) at 280). Consequently, the plaintiff cannot sue for trespass for the Navan residence, even though he resided there.

[45] According to the plaintiff, the remainder of the incidents, both the incident with the gun and the incidents of surveillance, show a course of conduct by the RCMP that invaded the privacy of the plaintiff and consists of intrusion upon seclusion. The plaintiff argues that the surveillance on the plaintiff was an intentional intrusion by the RCMP, that there is no evidence that it was authorized by law and that it would be highly offensive to a reasonable person. With

regards to the gun incident, it is an act of harassment, and even though harassment is not actionable *per se*, it can be considered as part of the course of conduct by the RCMP that constitutes intrusion upon seclusion.

[46] The defendant argues that the RCMP did not conduct surveillance on the plaintiff. Surveillance is done in criminal matters, and no surveillance was authorized on the plaintiff by Staff Sergeant Gagnon. In addition, RCMP officers, including Constable Pion, would not have been able to conduct surveillance on someone they know. Also, it would not have been possible for the RCMP to obtain a wiretap on the plaintiff as there needs to be a criminal matter and the way of proceeding with a wiretap does not fit the description of the events by the plaintiff. With regards to the gun incident, the defendant argues that the RCMP did not attempt to sell a gun to the plaintiff. The defendant notes that Staff Sergeant Gagnon would have been personally aware as he was responsible of the confidential human sources and that such an arrangement would have been illegal.

[47] Though the defendant argues that the plaintiff's testimony and notes were not reliable, I agree with the plaintiff that his credibility was not significantly challenged with regards to the incidents of surveillance. The plaintiff was a credible witness and incidents of surveillance, including the incident involving Constable Pion, were corroborated by Ms Séguin. In addition, I would note that Constable Pion did not deny the Superstore incident, he simply stated that he had no memory of it. Also, the defendant did not produce the RCMP officers identified by the plaintiff as taking part in the June 6, 2006 incident. Finally, the defendant did not provide any

evidence that the plaintiff was fabricating or that he suffers from paranoia. However, the fact that the plaintiff was credible does not mean I accept all of his evidence.

[48] First, I give very little value to hearsay evidence, including the plaintiff's evidence of what the informant would have told him as well as his evidence of what various police officers pulling him over would have told him. Nor the informant or the police officers in question were heard in Court. The tape of the conversation with the informant was not produced and the notes taken by the plaintiff are not verbatim. Moreover, Staff Sergeant Gagnon denied under oath that the RCMP hired an informant to entrap the plaintiff by having him buy a gun. Second, I dismiss as purely speculative or not plausible the uncorroborated and denied allegation that the RCMP installed a wiretap on the phone of the Navan residence.

[49] Third, though the plaintiff's testimony demonstrates that visual surveillance was conducted on him, the plaintiff did not prove on the balance of probabilities that the RCMP was responsible for conducting such surveillance. It could have been any organization interested in him. The only direct evidence that the plaintiff provided on that question was the fact that on two occasions (June 6, 2006 at the TD Bank parking lot and summer of 2009 at the Superstore) he recognized some RMCP officers. His belief that the surveillance was conducted by the RCMP is mostly based on his past experience in surveillance and counter-surveillance techniques. However, Staff Sergeant Gagnon, who was responsible for signing off on every operational plan requesting surveillance, testified that he was aware of no plan involving the plaintiff and Constable Pion directly testified that he had never conducted surveillance on the plaintiff. There is no evidence, documentary or otherwise, emanating from any other source than the plaintiff

that the RCMP was conducting surveillance on the plaintiff. In addition, the plaintiff did not establish why the RCMP would have conducted surveillance on him for a five year period, other than evoking the possibility that it could be linked to his disciplinary investigation. Thus, even if I am ready to accept that the plaintiff was under surveillance, the evidence does not conclusively establish that it was at all relevant times the RCMP or another police body acting on behalf of the RCMP. Consequently, the plaintiff has not established that the RCMP conducted surveillance on him.

[50] Even if I had concluded that the plaintiff had proven on a balance of probabilities that the RCMP had conducted surveillance on the plaintiff, I would not have come to the conclusion that this course of action constituted a tort. The surveillance done on the plaintiff was never done inside private areas and was always limited to the street, parking lots or to stores. The plaintiff did not point me to any case where a court found that similar actions constituted an actionable tort. The plaintiff argued that there was no need for contact for invasion of privacy, and what the plaintiff does all day is subject to privacy law. The plaintiff did refer me to the case of *MacKay v Buelow*, [1995] OJ No 867 [*MacKay*], where a woman was awarded damages against her former spouse who stalked her.

[51] However, *MacKay* is not applicable here since in that case, there was repeated and intentional contact between the parties, as Buelow (at para 8):

“harassed and intimidated the plaintiff on numerous occasions by continuous telephone calls during the day and night, letters and notes left at her home, threats to kidnap the daughter Angela and remove her from the country, threats to the physical safety and well being of the plaintiff and Angela, throwing a cupboard door directly at the plaintiff and narrowly missing her, hanging a used

condom on the wall in her home, stalking the plaintiff on several occasions by car and on foot, directly and indirectly threatening to kill her, videotaping her through her bathroom window from a tree, advising third parties of the existence of nude movies of her and continuously harassing her friends and professional advisors.”

[52] This is not a similar case. From the evidence provided by the plaintiff, any contact between the officers conducting surveillance and the plaintiff was accidental and there was no communication between them. In addition, there were no allegations that the plaintiff was videotaped or photographed, neither in a private or public setting (except on one occasion by the man with the camera who entered the store The Source after apparently followed the plaintiff and his son at Staples), nor that he was observed in a private setting. Though I agree with the plaintiff that he has a privacy interest in his day to day activities and that surveillance conducted only from public settings can constitute an invasion of the private affairs of an individual, the surveillance in this case does not meet the criteria of intrusion upon seclusion. Moreover, considering the facts that the plaintiff had been convicted of criminal harassment and was the subject of a disciplinary investigation, a reasonable person would not find the surveillance in this case highly offensive. Consequently, the plaintiff did not establish that the RCMP committed the tort of intrusion upon seclusion.

[53] In all other respects, I accept the arguments for dismissal of the action made by the defendant's Counsel in her closing submissions.

[54] For these reasons, the present action shall be dismissed by the Court. In view of the result, the defendant is entitled to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the action be dismissed with costs in favour of the defendant.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-996-09

STYLE OF CAUSE: GARY SAUVE v HER MAJESTY THE QUEEN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 1, 2015,
JUNE 2, 2015 AND
JUNE 4, 2015

JUDGMENT AND REASONS: MARTINEAU J.

DATED: JUNE 11, 2015

APPEARANCES:

Cheryl Letourneau FOR THE PLAINTIFF

Agnieszka Zagorska FOR THE DEFENDANT
Jyll Hansen

SOLICITORS OF RECORD:

Bertschi Orth Solicitors and FOR THE PLAINTIFF
Barristers LLP
Ottawa, Ontario

William F. Pentney FOR THE DEFENDANT
Deputy Attorney General of Canada
Ottawa, Ontario