

E-File Name: 2019-05-03SVQStewartJ
Appeal No.:

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN

JAMES STEWART

Plaintiff

and

GORDON KEATING, BRADLEY MCAVOY, VINCENT SCHAEFER,
RYAN HOUNSELL, and ADAM BOYCE

Defendants

CHARGE TO THE JURY
Volume 1
(Pages T1 - T20)

May 3, 2019
Saskatoon, Saskatchewan

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1 Proceedings taken in the Court of Queen's Bench, Saskatoon, Saskatchewan

2

3

4 May 3, 2019

Morning Session

5

6 The Honourable

Court of Queen's Bench for Saskatchewan

7 Mr. Justice R.S. Smith

8

9 (No Counsel)

For the Plaintiff

10 R. Gibbings, Q.C.

For the Defendants

11 A. Rohrke

For the Defendants

12 B. Werezak

Court Clerk

13

14

15 **Discussion**

16

17 THE COURT:

Please be seated. Okay. Bring in the jury.

18

19 THE SHERIFF:

Yes, My Lord.

20

21 THE COURT:

Deputy.

22

23 THE COURT CLERK:

(INDISCERNIBLE).

24

25 MR. STEWART:

Oh, I wasn't sure if you wanted me to do

26 it right now.

27

28 THE COURT CLERK:

(INDISCERNIBLE).

29

30 MR. STEWART:

Sure. Oh, really? Okay. My Lord, just --

31 Madam Clerk handed me the plaintiff exhibit list, and it just appears that a number

32 of the defendants' notes did not get entered, and I was just hoping to address that.

33 And Ms. Rohrke, my friend here, she's got their -- their notes. So I was just hoping

34 to enter them into evidence.

35

36 MS. ROHRKE:

My Lord, I'm prepared to allow those

37 notes into evidence. I just need to confirm with the plaintiff which notes he's

38 seeking, and then I have the hard copy, and I can make copies, perhaps, and

39 provide them to Madam Clerk, because these are my --

40

41 THE COURT:

Okay. That's very gracious of you. Thank

1 you.

2

3 MR. STEWART: Yeah.

4

5 MS. ROHRKE: That one? Right?

6

7 MR. STEWART: Adam Boyce. Yeah. Yeah. Yeah.

8

9 MS. ROHRKE: Yeah? Okay. I just need
10 (INDISCERNIBLE). Who was the other one?

11

12 MR. STEWART: McAvoy, Hounsell, and Bryce.

13

14 MS. ROHRKE: So McAvoy is this one, right?

15

16 MR. STEWART: Yeah, Bradley McAvoy, yeah.

17

18 THE COURT: Just carry on, Ms. Rohrke, with your
19 duty.

20

21 MS. ROHRKE: Okay. Can you just (INDISCERNIBLE).

22

23 (JURY ENTERS)

24

25 THE COURT: Please be seated. Good morning,
26 members of the jury. Ms. Rohrke and Mr. Stewart are just working together to
27 regularize the documents. So I am going to allow them to keep working while I
28 give you the final address, okay?

29

30 **Charge to the Jury**

31

32 THE COURT: Now, members of the jury, you have now
33 heard all the evidence in this case and the submissions of the plaintiff and defence
34 counsel. Before you retire to consider your verdict, I will instruct you on the law
35 and may review some of the evidence. When you retire to deliberate, you must
36 consider my instructions as a whole. Don't single out some parts and ignore others.

37

38 You are probably wondering, well, how do I go about making the decision? Good
39 question. What you need to do is answer a set of questions which will lead or result
40 in a verdict. And I will now show you the form of questions you will be asked to
41 answer.

1
2 Madam Clerk, I would ask that you distribute the questions to the jury. It is a set of
3 four questions, but for each defendant. And, Madam Clerk, a copy of the questions
4 will go to the plaintiff and the defence. And there is a copy for the Court, Madam
5 Clerk, and you will mark it as a bundle Exhibit C-1, Court Exhibit 1.

6
7 **EXHIBIT C-1 - Questions Sheet for the Jury**

8
9 THE COURT:

10 So let's go through the questions because
11 this is, in fact, your task. You will note the first question asks of each of the
12 defendants. All five defendants will have the same question. The first question asks
13 of each of the defendants whether they acted in good faith at all times in their
14 dealings with the plaintiff, James Stewart. If the answer to that question is "yes,"
15 the direction is for you to stop. Bang. The trial is over. Why is that? Well, the
16 conduct of police in the Province of Saskatchewan is governed by *The Police Act*.
17 Section 103 of *The Police Act* protects police officers from claims for damages in
18 negligence and other civil wrongs, like assault, on condition that they are acting in
19 good faith. Therefore, if you conclude a police officer acted in good faith, he is not
20 liable for damages even if, in effecting an arrest, more force was used than
21 necessary. The question is was he acting in good faith.

22 And I might add that these good faith defences protect not only police. There are
23 various civil servant classes that are protected, and you have similar sections in
24 other pieces of legislation. For the police, it makes sense. They are acting in a very
25 difficult environment.

26
27 Now, the presence of good faith requires that for any of the defendants to be liable,
28 (1) the jury must conclude on a balance of probabilities that that defendant's
29 conduct, that that police officer's conduct, was a malicious abuse of public
30 authority, or -- and it's not "and," it's "or," one or the other -- (2) the jury must
31 conclude on a balance of probabilities that that defendant's conduct was so
32 markedly inconsistent with his public responsibility that the jury cannot reasonably
33 conclude that that defendant was performing his responsibilities in good faith.

34
35 So you have to sit back as a group, look and reflect upon the evidence as a whole,
36 and employ your common sense to determine whether the good faith defence
37 operates to save the defendants. Or if you accept the argument of the plaintiff, then
38 you go on to the next question. Please remember you must engage in that analysis
39 for each of the defendants. So if the answer to the first question is "yes," we stop. If
40 the answer is "no," question 2.

41

1 The second question asks of each of the defendants, did that defendant use more
2 force than was necessary under the circumstances? I again ask that you use your
3 common sense. You have heard two very different versions of what went on. The
4 plaintiff bears the burden of proving his case on a balance of probability. Did the
5 evidence that he advanced tip the scales more in favour of the plaintiff or is it in
6 favour of the defendant? Whose evidence do you believe? Whose evidence do you
7 reject?

8
9 The third question asks if any of the defendants engaged in abuse of process. Now,
10 you might reasonably say, "Well, what do you mean, abuse of process?" This is
11 fairly asked. The essential element of an abuse of process is that someone in
12 authority is taking an action as that authority not for the duty he has to engage
13 in, but for a different reason, an improper reason, an improper purpose. That
14 they are engaging in an activity which is not a legitimate activity for the
15 purpose of fulfilling their duty.

16
17 The final question is did any of the defendants intentionally inflict mental suffering
18 on Mr. Stewart. Again, I respectfully say to you I regard that as a common sense
19 call on the basis of the evidence you have heard. You have heard conflicting
20 evidence. Your job is to make the call. Those are the facts.

21
22 Now, to find for the plaintiff on the issue of inflicting mental suffering, you must
23 conclude that a defendant or a number of them -- and again, the analysis is separate
24 for each defendant -- that a defendant or a number of them took flagrant action to
25 cause mental harm to Mr. Stewart, and that harm was caused.

26
27 Now, it is my responsibility to instruct you on the law. You must accept my
28 instructions in this respect. You should not deal with the case on the basis of what
29 you think the law is or what you think the law should be. You must disregard
30 anything either party has said to you about the law if it conflicts with what I tell
31 you. You, however, are the sole judges of the evidence and of the facts that arise
32 from the evidence. Your findings must be based only on the evidence you have
33 heard in this court, the evidence being what was said in the box and the exhibits.

34
35 In reaching your decision, you should not base your verdict on sympathy for the
36 plaintiff or the defendant or any witness, nor should it be based on any feelings for
37 or against the plaintiff or for or against the defendant, just the evidence. It is your
38 memory of the evidence that counts. We do not have a transcript of what was said
39 in this case; therefore, you must rely on your own memory and notes from the
40 evidence. However, it is the jury's right to ask to listen to the evidence of a specific
41 witness. There are rules surrounding that. You don't get to listen to just a portion of

1 the witness's evidence. You must listen to all of it, the whole exam-in-chief and the
2 cross-examination.

3
4 Under our system of law, a judge has the right to comment on the evidence of the
5 witnesses. However, make no mistake, it's your views that count. If your views
6 vary from mine or if you disagree with my comments about the evidence, disregard
7 my comment. Give effect to your own thoughts. As I said, you are the sole judges
8 of the facts.

9
10 Generally, I suggest that you use common sense and experience as citizens of the
11 community to assess the credibility of each witness. In doing so, you should keep
12 the following points in mind. When you consider the evidence of the witness,
13 please understand that you do not have to accept or reject everything a particular
14 witness said. You may accept or reject part or all of what any witness said. The
15 decision is yours as to how much you accept and how much you reject.

16
17 Now, as you know, people hear and see things differently. This means that you may
18 find some discrepancies between the testimonies of the various witnesses. That
19 does not mean you must reject the evidence of a particular witness because of these
20 discrepancies, particularly if they relate to minor matters. Minor discrepancies in
21 what people experience are the norm. You rarely get identical recitations of events.
22 And this is why we use videotape, and this is why we have developed now
23 audiotape.

24
25 Where there is conflicting evidence -- and there is conflicting evidence -- you
26 should look to see if the evidence of one witness is supported or confirmed by the
27 evidence of another whom you believe. Where there is supporting or confirming
28 evidence on one side of the evidence but not on the other, this may persuade you to
29 believe the testimony. Look at the conduct and demeanour of the witnesses. Which
30 one of them presents as someone who was telling the truth? That's the question you
31 should ask yourself. And more to the point, do I believe that was the truth?

32
33 In addition to those considerations, you should ask yourselves the following
34 question when you assess the evidence of each witness: Was there something
35 specific that helped the witness remember the details of the event he described? In
36 other words, was there something unusual or memorable about the event, so you
37 would expect the witness to remember the details? Did the witness appear to have a
38 good memory? How did the witness appear when giving evidence? Was he
39 straightforward and responsive to the question or was he evasive, hesitant,
40 argumentative? Was the testimony of the witness reasonable and consistent or
41 self-contradictory? Was his testimony consistent with the testimony of others? Was

1 the witness impartial or did he have some interest in the outcome of this case? In
2 that sense, all of the players had an interest in the outcome of this case. That's the
3 reality. But, look, there is no fixed set of rules to use in assessing the credibility of
4 the witness, but these things are some of the things you should consider. Again, a
5 hefty application of common sense will help you decide what evidence you accept
6 and how much weight you wish to give it.

7
8 You must not decide the case or a question simply by counting which side has more
9 witnesses. You may decide that the testimony of fewer witnesses is more reliable
10 than the evidence of a larger number. It is the force of the evidence that counts, not
11 the number of witnesses.

12
13 Now, in civil actions such as this one, the party who brings the claim, James
14 Stewart, must carry the burden of proving it on a balance of probability. So in this
15 case, the plaintiff has the burden of proving on a balance of probabilities that the
16 answer to the first question is no, and that the answer to the remaining questions is
17 yes. He has to advance evidence to have you reach those conclusions.

18
19 So what does proof on a balance of probabilities mean? It does not mean beyond a
20 reasonable doubt. That's the standard of proof in criminal trials. That's not
21 operative here. In civil trials, such as this one, the party who has the burden of
22 proof on an issue must convince you that what he asserts is more probable than not,
23 that the balance of the scales of justice is tipped in his favour. You must examine
24 the evidence and determine whether the party who has the burden of proof on an
25 issue is relying on evidence that is more convincing than the evidence relied on by
26 the other side. If the evidence on a specific issue, a specific question, is evenly
27 balanced, like you can't see the scales tipping at all, then your decision on that issue
28 must be against the plaintiff, because he has the burden of proving it. In deciding
29 whether an issue has been proven on a balance of probabilities, you should consider
30 all of the evidence relevant to the issue, no matter who produced it.

31
32 You have heard the addresses of the plaintiff, James Stewart, and of counsel for the
33 defendant, Mr. Gibbings. Each one makes the case as to why the plaintiff or the
34 defendants ought to succeed. I will now very briefly and at an over-the-forest level,
35 summarize.

36
37 We have the plaintiff, James Stewart. He asserts that the police came at him and
38 essentially beat him up and roughed him up for no reason. He was not resisting. He
39 was detained in an unreasonable way, cuffed behind the back, thrown in the car,
40 taken and held until the next day, and as a result had mental suffering. He says that
41 the police acted unreasonably towards me, unreasonably rough, and not in good

1 faith. That's his case.

2
3 Mr. Gibbings says, Wait a minute. In the recitation of the events respecting the
4 arrest -- and again, the arrest is lawful. That's been proven in another place. The
5 events respecting or surrounding the arrest are that the police used reasonable
6 force, no more force than was reasonably necessary. They were not abusive. The
7 issue of detention: It was Friday night, he was held until the next day, put in front
8 of a JP, and in any event, they didn't decide when he gets out. At the overarching
9 level, Mr. Gibbings says, There's no evidence of bad faith. There is evidence of
10 good faith. You don't get by question one. That's his case.

11
12 If you conclude that the defendants acted wrongfully in their arrests and the
13 detention of Mr. Stewart was wrong, the issue of damages arises, in which case we
14 will reassemble and there will be a debate, a debate by Mr. Stewart and counsel for
15 the defendants about that.

16
17 So it is your duty to consult with one another and to reach a just verdict according
18 to law and the evidence. In doing so, you must be true to your oath to try the case
19 upon the evidence and disregard any outside influence or prejudices you may have.

20
21 Your foreperson will preside and assist you in the orderly discussion of the
22 questions. Each of you should have an opportunity of expressing your own points
23 of view without being unnecessarily repetitive. When you are discussing the issues,
24 you should, of course, listen attentively to the reasoning of your fellow jurors.
25 Approach your duties in a rational way and put your own points of view forward in
26 a calm and reasonable manner. Each of you must make your own decision as to
27 whether the arguments of the plaintiff, Mr. Stewart, or the arguments advanced on
28 behalf of the defendants are to succeed. Those important decisions should only be
29 made after consideration of the evidence and discussion with your fellow jurors.
30 You should not hesitate to change your mind. Changing your mind is not a sign of
31 weakness.

32
33 Hopefully, by addressing the questions posed to you -- and again, there are separate
34 questions for each defendant. Hopefully, addressing those questions will keep you
35 focussed and then lead to a conclusion, lead to a verdict. However, if, during your
36 discussions, you find yourself grappling with a specific issue and you have a
37 question for me, I will gladly assist you. So if you have a question, please put it in
38 writing and give it to the deputy.

39
40 There will be two deputies outside your door at all times; that is correct, Deputy?
41

1 THE SHERIFF: That is correct.

2

3 THE COURT: That is correct. And the deputy will bring
4 the question to me. I will first discuss it with Mr. Stewart and counsel for the
5 defence. You will then be brought back into the courtroom, and I will reply to your
6 question. I would ask you to put your question in writing, one, so that I can
7 understand exactly what it is you want done or answered, and that way I can be
8 more accurate in my reply. It also is a way to keep the record nice and clean, which
9 we want to do.

10

11 As I said, in the event you want to hear testimony from one of the witnesses, we
12 will play it back to you. But there are rules regarding the playback of evidence. For
13 example, you can't say, "We'd like to hear the exam-in-chief of Witness X." If you
14 want to hear part of that testimony of Witness X, you will hear all of it,
15 exam-in-chief and cross. In short, you are not allowed to just have a segment
16 played.

17

18 *The Jury Act* does not require unanimity by a civil jury. It does in criminal. In a
19 criminal jury, there are 12, and everyone has to say "yea" or "nay." That's not the
20 way it is in civil juries. Section 16 of our *Jury Act* says that in civil proceedings,
21 five jurors may return a verdict or answer a question put to the jury. Thus, on a
22 question-by-question basis, if five out of six jurors agree on an answer, then that's
23 the whole jury's answer on that question. And you should know it need not be the
24 same five for each question. As long as it is five for each question, then that is the
25 decision of the jury. So five must say "yes" or five must say "no," but it must be
26 five.

27

28 It may be, and I hope this is not the case, that on one of the questions, you can't get
29 five out of six. In that case, I want you to advise me. I will bring you back into the
30 courtroom. I will speak to you harshly. You should know that I will not likely
31 accept the lack of a decision. The law permits me to continue to send you back into
32 the jury room or keep you in a hotel until the matter is decided. It is in the interests
33 of all the parties to this lawsuit to have this matter finally resolved.

34

35 When all of the questions on the question sheet are answered for each of the
36 defendants, by five out of six, your foreperson, Juror 306, should sign each answer
37 sheet and note your Juror Number, and then advise the deputy that the verdict is
38 ready to be given. We will then reassemble. And counsel may be gone for lunch or
39 something. I will be in the courtroom, but they may be out and around, Mr. Stewart,
40 out and around that restaurant, but we will reassemble the crew. And then I will go
41 through the verdict sheet with your foreperson.

1
2 So you are now in a position to retire to the jury room to start your deliberations.
3 But do not start them yet. After my charge to the jury, I always invite the parties,
4 Mr. Stewart and counsel for the defendants, to provide me with constructive
5 criticism of my wording. And then in the event that they might be right, that there
6 was a defect, I will bring you back in and correct it, in the event I conclude whether
7 it is right or not. In the event I conclude it is right, I will give the deputy the signal,
8 and he will tell you to start deliberating. So do not start talking about, you know,
9 the questions until you get the go sign from the deputy.

10
11 Okay. Deputy. Take them to the room.

12
13 THE SHERIFF: The jury guards are here in the
14 courtroom. I just wanted to bring that to your -- My Lord's attention.

15
16 THE COURT: You know what, it is important that the
17 swearing-in be on the record. It doesn't have to be in front of the jury, though.

18
19 THE SHERIFF: Correct.

20
21 THE COURT: You will ensure there is chairs for the
22 jury guards?

23
24 THE SHERIFF: I will.

25
26 THE COURT: Take the jury out.

27
28 THE SHERIFF: Thank you, My Lord.

29
30 MR. STEWART: We'll see that the jury gets the updated
31 list of the notes. Yeah.

32
33 (JURY RETIRES - 9:26 AM)

34
35 THE COURT: So I would ask that the jury guards come
36 forward and just stand beside the counsel table? Thank you.

37
38 MR. STEWART: (INDISCERNIBLE).

39
40 THE COURT: Yes.

41

1 MR. STEWART: That was it. Yeah. Yeah.
2
3 THE COURT: Right there is fine.
4
5 MR. STEWART: McAvoy (INDISCERNIBLE).
6
7 THE COURT: So there is a special --
8
9 MR. STEWART: (INDISCERNIBLE) --
10
11 THE COURT: -- oath that we give the jury guards. And
12 Madam Clerk will attend to it.
13
14 Sit down.
15
16 THE COURT CLERK: Place your right hand on the Bible. State
17 your name for the Court.
18
19 UNIDENTIFIED SPEAKER: Bill Mahery (phonetic).
20
21 UNIDENTIFIED SPEAKER: Maria Sampson (phonetic).
22
23 THE COURT CLERK: Do you each swear that you shall well
24 and truly keep this jury together? You shall not allow them to separate. You shall
25 not allow any person to speak to them, nor shall you speak to them touching any
26 matter relating to this trial, except by direction of the Court, so help you God?
27
28 UNIDENTIFIED SPEAKER: So help me.
29
30 THE COURT: So just go down the hall to the jury room.
31 Thank you very much. I have made sure there are chairs for you.
32
33 So, you know, often, if there's a question -- your security clearance has been
34 revoked. (INDISCERNIBLE).
35
36 Often if there's a question, it's typically in that first hour and a half. Then you -- is
37 there a problem with you staying close, Mr. Stewart?
38
39 MR. STEWART: No, My Lord.
40
41 THE COURT: After an hour and a half, then, I'd say if

1 you want to go for lunch for something, but for the first 90 minutes, do you have
2 any problem with that?
3
4 MR. GIBBINGS: Not at all.
5
6 THE COURT: And I realize you have some family
7 issues, Mr. Gibbings.
8
9 MR. GIBBINGS: It's -- it's --
10
11 THE COURT: You should feel free to come and go as
12 you see fit. Ms. Rohrke will carry the ball.
13
14 MR. GIBBINGS: Thank you very much, My Lord.
15
16 THE COURT: Okay. So we will adjourn.
17
18 THE COURT CLERK: Do you want to mark these exhibits?
19
20 MR. STEWART: Well, that's what I thought we -- that was
21 the whole --
22
23 THE COURT: Oh, okay.
24
25 MS. ROHRKE: My Lord, I just sent our articling student
26 downstairs to photocopy them, because those are my only original.
27
28 THE COURT: Okay.
29
30 MS. ROHRKE: And I apologize.
31
32 THE COURT: Oh, that's right. I don't have to be here
33 because it's going in by the consent of the parties. So do you -- you should identify
34 the -- you should identify -- is it the --
35
36 MS. ROHRKE: It's the notes. I can --
37
38 THE COURT: -- occurrence report?
39
40 MS. ROHRKE: It's the occurrence reports of three
41 officers.

1
2 THE COURT: Okay.
3
4 MS. ROHRKE: I can stay here and help Madam Clerk
5 and make sure that --
6
7 THE COURT: Yes. Identify them as occurrence report
8 of so-and-so.
9
10 MS. ROHRKE: -- the plaintiff -- yes.
11
12 THE COURT: Specific name.
13
14 MS. ROHRKE: Yes.
15
16 THE COURT: And then, Madam Clerk, you will assign
17 a exhibit number, and then you will create a new and complete exhibit list for both
18 Mr. Stewart and the defendants. All right? All of which will be done in my
19 absence. Correct?
20
21 We are adjourned until the call of the jury.
22
23 **EXHIBIT P-14 - Occurrence Report of Adam Boyce**
24
25 **EXHIBIT P-15 - Occurrence Report of Ryan Bae Hounsell**
26
27 **EXHIBIT P-16 - Occurrence Report of Bradley McAvoy**
28
29 (ADJOURNMENT)
30
31 THE COURT: It was presumptuous of me to assume the
32 two of you were consenting. So it is now on the record.
33
34 THE COURT CLERK: Let me just turn my computer on --
35
36 THE COURT: Okay.
37
38 THE COURT CLERK: -- because I didn't know you were
39 leaving. So I don't know if you want to go through it again?
40
41 THE COURT: No.

1
2 THE COURT CLERK: Just to make sure that --
3
4 THE COURT: So the record will note I was thinking
5 ahead of myself. Mr. Stewart has indicated that he is content with my charge to the
6 jury. Mr. Gibbings has indicated he is content. I will direct the deputy to give the
7 go signal.
8
9 THE SHERIFF: Yes, My Lord.
10
11 THE COURT: I have got the exhibits --
12
13 THE SHERIFF: Sorry?
14
15 THE COURT: I again apologize for being
16 presumptuous.
17
18 MR. STEWART: (INDISCERNIBLE) he has them.
19
20 THE COURT CLERK: Okay.
21
22 MR. STEWART: Madam Clerk, it was -- they're going to
23 use it.
24
25 (ADJOURNMENT)
26
27 THE COURT: Thank you. Please be seated.
28
29 Bring the jury in, Deputy.
30
31 THE SHERIFF: Yes, My Lord.
32
33 (JURY ENTERS - 2:07 PM)
34
35 THE COURT: Please be seated. Madam Clerk, would
36 you please do the confirmatory roll call.
37
38 (JURY POLLED - ALL PRESENT)
39
40 THE COURT: Thank you. Some of you are probably
41 saying, Gee, we've been here all week, why is he doing that? There is a reason. *The*

1 *Jury Act* requires that for there to be a lawful jury verdict in a civil trial, there must
2 be at least five jurors present. So the clerk's calling of the roll puts it on the record
3 that there are five. So that's why.

4

5 Members of the jury, I understand from the deputy that you have reached a verdict;
6 is that correct?

7

8 THE FOREPERSON: Yes.

9

10 THE COURT: Could I impose upon Juror 306, the jury
11 foreperson, to stand and address the questions? Are you comfortable standing,
12 ma'am?

13

14 THE FOREPERSON: Yeah.

15

16 THE COURT: Very good. Madam foreperson, there are
17 five defendants. Is the jury's verdict the same with respect to each of them?

18

19 THE FOREPERSON: Yes.

20

21 THE COURT: And are each of the five jury questions
22 sheets signed by you?

23

24 THE FOREPERSON: Yes.

25

26 THE COURT: And the box or boxes checked?

27

28 THE FOREPERSON: Yes.

29

30 THE COURT: With respect to the question or questions,
31 depending on how you have decided, did at least five of the six of you agree?

32

33 THE FOREPERSON: Yes, My Lord.

34

35 THE COURT: All right. There being no differences
36 between the defendants, I will address the first question this way. Did each of the
37 defendants act in good faith at all times in their respective dealings with the
38 plaintiff? Yes or no?

39

40 **Verdict**

41

1 THE FOREPERSON: Yes.

2

3 THE COURT: Thank you. Please sit down. Deputy,
4 could you gather up the answer sheets, the jury verdict sheets, and give them to the
5 clerk?

6

7 THE SHERIFF: Yes, My Lord.

8

9 THE COURT: Madam Clerk, you will mark them as a
10 bundle, C-2, that is to say, Court Exhibit 2.

11

12 The answer "yes" to the good faith question ends the deliberations.

13

14 Mr. Stewart, I am inclined to discharge the jury.

15

16 **EXHIBIT C-2 - Questions Sheet for the Jury - Answered**

17

18 MR. STEWART: Yes, My Lord.

19

20 THE COURT: Mr. Gibbings, any objections to me
21 discharging the jury?

22

23 MR. GIBBINGS: No, My Lord.

24

25 THE COURT: Members of the jury, look, you know,
26 outside the payment of taxes, Canada doesn't really call upon its citizens for duty
27 too much. The one exception, one of the few exceptions, is criminal and civil jury
28 trials. And you have been called upon for a week's worth of work, and it's been
29 some tough sledding at times. So I thank you for your work today. You can go
30 home and enjoy the weekend, knowing you have discharged your duty to Canada,
31 the administration of justice in Saskatchewan, and this Court. Thank you very
32 much. The deputy will escort you.

33

34 (JURY RETIRES)

35

36 THE COURT: So we will wait until the jury exits. Am I
37 correct, Mr. Gibbings, in assuming that the defendants will be looking for costs?

38

39 **Submissions by Ms. Rohrke (Costs)**

40

41 MS. ROHRKE: Yes, My Lord. We seek judgment in

1 accordance with the jury's findings and ask that the plaintiff's claim be dismissed
2 and seek costs in column 3, as the matter has been sufficiently complex to warrant
3 those.
4

5 THE COURT: I missed that last part.
6

7 MS. ROHRKE: We would be seeking --
8

9 THE COURT: I mean, the plaintiff's claim is dismissed
10 because of the jury finding, yes.
11

12 MS. ROHRKE: Okay. We would be seeking costs on
13 column 3 --
14

15 THE COURT: Right.
16

17 MS. ROHRKE: -- as we would submit that this has been
18 sufficiently complex to warrant costs of that nature.
19

20 THE COURT: It has been arduous for you. I don't see it
21 as being particularly complex.
22

23 MS. ROHRKE: Well --
24

25 THE COURT: There's the version told by the Stewarts.
26

27 MS. ROHRKE: I would suggest that the legal
28 proceedings have been sufficiently complex with respect to the --
29

30 THE COURT: Pardon me? I can't hear you.
31

32 MS. ROHRKE: I apologize. I would suggest that the legal
33 proceedings have been sufficiently complex in respect of the number of
34 applications that we've had to deal with and the length of time that it's taken to get
35 to this point. But, My Lord, I leave that up to you.
36

37 THE COURT: Yes. Column 3 is high. And I assume
38 you're looking for two counsel, as well.
39

40 MR. STEWART: (INDISCERNIBLE). My Lord. My
41 Lord?

1
2 THE COURT: Just hang on. I'll just finish with --
3
4 MR. STEWART: Yeah. Okay.
5
6 THE COURT: -- Ms. Rohrke, and I will get to you.
7
8 MR. STEWART: No, yeah.
9
10 MS. ROHRKE: Yes, My Lord.
11
12 THE COURT: Okay. Yes, Mr. Stewart. So --
13
14 **Submissions by Mr. Stewart (Costs)**
15
16 MR. STEWART: My Lord. My Lord, originally Justice
17 Konkin would not an issue here because it was a human rights violation, and my
18 friend, Robert Gibbings here, he asked Judge Konkin at the beginning, and Judge
19 Konkin said you would not be getting costs with this. And now, now you are
20 looking for tier 3 of something, that this is -- Jennifer Jeremiah, in human -- this is
21 a human rights violation. Now you're going to put -- you now -- after all the money
22 I've spent, with this being paid by them, now they're still seeking costs against me?
23
24 I'm just going to have to say that I find that a little heavy-handed, Your Honour,
25 and I'd just like to -- pursuant to Jeremiah v. The Human Rights -- the Ontario
26 Human Rights Commission, like, this is a human rights violation. And now to --
27 now to put me at risk of more costs, it -- I'm just going to say that that's a human
28 rights violation, and I take offence to that, My Lord.
29
30 THE COURT: And I understand that. Although I must --
31 can you -- I don't understand the reference to the human rights violation.
32
33 MR. GIBBINGS: I don't either, My Lord.
34
35 THE COURT: Okay. Maybe yes in --
36
37 MR. STEWART: It's a total -- (INDISCERNIBLE) --
38
39 THE COURT: -- certainly, if you complain to the
40 human rights because you weren't served at a restaurant because you are First
41 Nations, there is not usually costs awarded to the winner there. This is a civil

1 lawsuit.

2

3 Did you want to say something, Jarvis?

4

5 MR. JARVIS STEWART: Yes, sir. This was a total deprivation of a
6 person's liberty for 18 hours. It's a human rights issue.

7

8 THE COURT: Yes. Okay. Again, we are dealing with a
9 civil lawsuit, and it deals -- and it engages *The Police Act* and the issues of good
10 faith. And the fact of the matter is, just as it happened in your case, Jarvis, in a
11 judge-alone case, you have lost this case.

12

13 With respect to costs, Mr. Stewart, I take it your position is they should be as
14 minimal as the Court can tolerate because you have already spent enough; is that
15 fair?

16

17 MR. STEWART: I -- I'm -- that's a fair statement, My Lord.
18 But I would -- I would -- I would push and say, My Lord, that these -- these -- these
19 gentlemen, these police officers, have not really needed -- they don't -- they don't
20 need to be reimbursed with costs. This is -- this is -- this is not out of their own
21 personal pocket.

22

23 THE COURT: Well, it's -- it's the people that pay
24 Mr. Gibbings and Ms. Rohrke. Yes.

25

26 MR. STEWART: I understand -- My Lord, I understand
27 that. And it's just my personal -- to you -- to my --

28

29 THE COURT: Yes. And -- and --

30

31 MR. STEWART: It's just -- I would ask, My Lord, for your
32 discretion, My Lord.

33

34 **Ruling (Costs)**

35

36 THE COURT: Yes. And I can understand that. You
37 would like them to be as small as possible. Again, just by way of big picture, if you
38 lose a civil lawsuit, you almost inevitably end up paying costs to the winner. And
39 that will happen today.

40

41 So, Madam Clerk, you have note that I have dismissed the claim as the result of the

1 jury's verdict. With the greatest of respect to our friend Ms. Rohrke, I am not
2 prepared to award costs on column 3. I mean, again, was it arduous? Yes. Did you
3 have to sit down and say, Boy, how do I engage legal reasoning here? No. So costs
4 will be column 2, but for two counsel.

5

6 Anything else?

7

8 MR. GIBBINGS:

No. Thank you, My Lord.

9

10 THE COURT:

All right. Madam Clerk, adjourn the

11 Court.

12

13

14 PROCEEDINGS CONCLUDED

15

16

IN THE MATTER OF THE QUEEN v. JAMES STEWART v.
GORDON KEATING, BRADLEY MCAVOY,
VINCENT SCHAEFER, RYAN HOUNSELL, and ADAM BOYCE

AFFIDAVIT OF COURT TRANSCRIBER UNDER
SECTION 31 OF *THE EVIDENCE ACT*.

I, JESSICA CAUDRON, Court Transcriber, HEREBY MAKE OATH AND SAY,
that the foregoing typewritten pages being numbered T One (T1) to T Nineteen (T19),
inclusive, contain a true and correct transcription of the recorded proceedings taken
herein, to the best of my knowledge, skill and ability.

SWORN BEFORE ME at Regina,
Saskatchewan, this 22 day of
August, 2019.

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)

Jessica Caudron

R Coombs

A Commissioner for Oaths
for Saskatchewan.

My Commission expires:

June 30, 2023

**Certificate Under Section 30 of
The Evidence Act, R.S.S. 2006**

I, Bonita Werezak, Deputy Local Registrar of the Court of Queen's Bench in the Province of Saskatchewan HEREBY CERTIFY:

1. That the digital recording(s) stored on the Saskatchewan Justice Z: drive as file held in courtroom number #1 is the record of evidence taken before The Honourable Mr. Justice R. S. Smith of the Court of Queen's Bench in and for the Province of Saskatchewan at the Court House, 520 Spadina Crescent East, Saskatoon, Saskatchewan, in a judicial proceeding involving an action between:

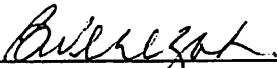
Style of Cause: James Stewart vs. Gordon James Keating et al

Date: April 29, 30, May 1, 2 & 3, 2019

File Number: QB 1063/14

2. That at the time the said recording was made, I was in charge of the sound recording equipment.

Dated at Saskatoon, in the Province of Saskatchewan, this 21st day of May, A.D. 2019.



Deputy Local Registrar
Court of Queen's Bench for Saskatchewan