

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROBERT STANLEY POLAND

Respondent/Plaintiff

- and -

MICHAEL MAITLAND

Applicant/Defendant

REASONS FOR JUDGMENT

1 The defendant in this defamation lawsuit makes application under the Rules of Court to have the statement of claim struck as not disclosing a cause of action, or alternatively, as being frivolous and an abuse of the court's process. I find there is merit in this application.

2 The plaintiff is a police officer with the Royal Canadian Mounted Police. The defendant as a member of the public made a complaint concerning the plaintiff's conduct to the appropriate authorities pursuant to the provisions of the Royal Canadian Mounted Police Act R.S.C. 1985, ch.R-10. The complaint was investigated by the appropriate authorities and it was determined to be unfounded.

3 The plaintiff now commences this lawsuit, alleging that the untrue statements

made about him in the complaint have defamed "his character and professional integrity".

4 It is submitted on behalf of the defendant that even if his statements were defamatory they were made on an occasion of absolute privilege and are therefore protected from the within action.

5 Our society places a value on personal reputation. The law of defamation is concerned with the protection of personal reputation. Our society also places a value on freedom of speech. Often, in litigation, there is a clash of society's values.

6 In certain circumstances, a person's interest in his own reputation must be subordinated to the interests of society as a whole. One such circumstance is in the processing and furtherance of judicial or quasi-judicial proceedings.

7 As a complaint made under Part VII (Public Complaints) of the Royal Canadian Mounted Police Act may lead to a formal inquiry and discipline measures by a statutory tribunal, this complaints process is a quasi-judicial proceeding within the scope of the privilege. Participants in such proceedings must feel free to speak openly and frankly and to pursue their rights without fear of consequential litigation. Hence, the immunity.

8 In a similar case in the Alberta Court of Queen's Bench ten years ago, involving a complaint against a municipal police officer, Quigley J in dismissing the action, stated:

"... The Police Act clearly recognizes that it is not only in the interest of police officers themselves, but also in the public interest that the validity of any comments about how the former discharge their duties on behalf of the community be determined in a formal and fair way. If absolute privilege were not extended to the author of a written complaint made pursuant to and in compliance with the Act, it would have the effect of weakening a safeguard to prevent abuses of authority ..."

Boyachyk v. Dukes 37 A.R. 199 at p. 205

9 In responding to the within application, plaintiff's counsel submits that there "may" be an interpretation of the purpose of the document containing the alleged defamatory words which takes it outside the ambit of the quasi-judicial proceedings, and that therefore the existence of a defence of absolute privilege should not be determined by a chambers judge on an interlocutory motion but rather should be left for determination by the trial judge.

10 Counsel points specifically to the initial words which appear at the top of the pre-printed form on which the defendant made his complaint, as follows:

11 **"RCMP Public Complaint Receipt**

This form, for the recording of the receipt of public complaints pursuant to Section 3, C.S.O. - Public Complaints, S.O.R. 88-904, has been approved by the Commissioner of the R.C.M.P.

Information on this form is collected under authority of the RCMP Act and is used in the disposition of public complaints as well as for statistical and internal purposes. It will not influence the handling and/or disposition of the complaint. It will be contained in Personal Information Bank CMP/P-PU-085. The Privacy Act provides that you may request to see information collected, ensure its accuracy and completeness and request that any incorrect data be amended."

(A copy of the completed form was attached as an exhibit to the affidavit of Brent Clute filed in response to the within application).

12 Counsel notes that there is some confusion in the wording inasmuch as it states that the information provided will be used in the disposition of public complaints yet it will not influence the disposition of the complaint. With this uncertainty, he submits, it is at least arguable that the defamatory words in the document are outside the ambit of the investigatory process and are not protected by the privilege, and further, that any such argument should be decided at trial and not at this interlocutory stage.

13 With respect, this submission ignores the plaintiff's own pleading. In the statement of claim it is the communication of the alleged defamatory words within the complaint process (not elsewhere) which is the subject of the action. It is the nature of the occasion in question, and not the communication itself, which is privileged.

14 Further, on an application under Rule 124A(1)(a) to strike out a statement of claim as not disclosing a cause of action, I am not to make reference to any affidavit evidence in any event. See Rule 124A(2). Here, the statement of claim on its face alleges the defendant uttered the statements on an occasion which is privileged. There is no cause of action disclosed by the pleading.

15 In addition, in the circumstances of the defence of absolute privilege being

disclosed in the statement of claim, I find that the pleading is frivolous and an abuse of the process of the Court (paragraphs (b) and (d) of Rule 124A(1)).

16 The application is granted, with costs. An Order will issue striking out the statement of claim.

J. E. Richard
J.S.C.

Plaintiff's Counsel: R. Peach

Defendant's Counsel: G. Phillips