Date: 20080917

Docket: T-117-02

Citation: 2008 FC 1047

Vancouver, British Columbia, September 17, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

MURI PEACE CHILTON

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] Muri Peace Chilton is an inmate in Warkworth Institution, a federal penitentiary. He worked in the CORCAN furniture shop, an industrial woodworking shop operated by Correctional Services of Canada (CSC) at the Warkworth Institution. On February 16, 2000, Mr. Chilton injured his left thumb while operating an overhead router under the direction of a CSC shop instructor.

[2] Mr. Chilton filed a Statement of Claim for negligence and a claim for damages for physical injury and psychological or psychiatric sequela. He alleged that his injury and the circumstances in which it occurred aggravated his mental illness.

[3] At the start of the trial, counsel for the defendant admitted liability for negligence.

[4] The resulting issues in this action are:

a. What injuries did Mr. Chilton incur as a result of the accident, including if any, psychological or psychiatric sequela?
b. Should the Court issue declarations concerning inmate work, health, and safety conditions?
c. What damages should be assessed for Mr. Chilton's injuries?

Background

[5] Mr. Chilton is serving a life sentence of imprisonment for second degree murder, an offence he committed while on parole for a prior conviction of attempted murder. At issue at the time of his second trial was the nature and extent of Mr. Chilton's mental illness. That issue was not adjudicated because Mr. Chilton pled guilty to second degree murder.

[6] Mr. Chilton has participated in various penitentiary programs while incarcerated. He had taken advantage of educational opportunities and advises he has attained a Masters degree in mathematics from the University of Waterloo.

[7] One of the correctional opportunities available at Warkworth Institution is employment in the CORCAN furniture shop. Inmates may work in this industrial woodworking shop to acquire

employability skills and to earn a modest wage. Mr. Chilton had worked in the CORCAN furniture shop for about a year prior to the accident on February 16, 2000.

[8] On February 16, 2000, Mr. Chilton was injured while working in the CORCAN furniture shop. Mr. Chilton served notice that he intended to seek legal redress. He filed his Statement of Claim on January 21, 2002, claiming the defendant was liable for his injury because of recklessness, strict liability, negligence and gross negligence. He claimed $100,000 in damages. On December 15, 2003, Mr. Chilton amended his Statement of Claim, adding the further particular that he was receiving treatment and psychotherapy, and requesting, as further relief, a number of declarations concerning inmate work, health, and safety conditions.

[9] Mr. Chilton represented himself throughout, conducting written examinations for discovery, initiating interlocutory motions, and presenting his case at trial.

[10] Mr. Chilton testified at trial. He also called one witness, Dr. Michelle Boyd, a psychiatrist who treated him in 2002 – 2003.

[11] At the close of Mr. Chilton's case, counsel for the defence advised that he would not be calling any witnesses.

[12] Mr. Chilton sought to enter a number of documents as exhibits to which counsel for the defendant objected. After a review of these documents, I have decided to admit plaintiff's Exhibit 1

and Exhibit 2 for Identification as exhibits. Counsel for the defence also sought to enter a number of documents to which Mr. Chilton objected. I have decided that none of the defendant's Exhibits for Identification should be admitted.

Liability in Negligence

[13] Mr. Chilton was working in the CORCAN furniture shop at Warkworth Institution on February 16, 2000. Present that day were the shop instructor, Kelly Nelles, and the furniture shop supervisor, Hubert Brown. Mr. Nelles wanted to shape a large rectangular particleboard into a D-surface, a surface that has a half circle on one end. He requested Mr. Chilton assist in operating the overhead router.

[14] The overhead router bit is normally raised hydraulically by a foot pedal control allowing one person to shape large pieces of wood. The overhead router control lacked a bolt that coupled an upper steel plate together with a lower plate rendering the hydraulic foot control inoperable. Since the router assembly lacked a necessary connection, a second person was needed to activate the hydraulic piston that lifted the router bit by pressing the plates together instead of using the foot pedal control. Mr. Chilton was asked by the shop instructor to control the overhead router's lifting action by hand.

[15] Mr. Nelles showed Mr. Chilton how to press one plate to bring the steel plates together and took position in front of the overhead router holding the large particleboard about to be shaped. Mr. Nelles told Mr. Chilton to press the controlling plate to bring the two plates together.

Mr. Chilton pushed on the upper plate, causing the lower steel plate to press upwards against the upper plate, pinning Mr. Chilton's left thumb. He immediately released the upper plate, the two plates separated and he pulled his thumb free.

[16] Mr. Chilton incurred a two-inch laceration on the underside of his left thumb and a three-quarters inch laceration below the thumbnail nail. His thumbnail was partially torn free. He went to the sink and rinsed his injured thumb under cold water from the tap. After fifteen minutes, Mr. Nelles directed Mr. Chilton to go to the institution's hospital for treatment.

[17] After Mr. Chilton's injury, Mr. Nelles asked Hubert Brown, the shop supervisor, to take Mr. Chilton's place in operating the overhead router. Mr. Brown suffered a similar mishap when attempting to activate the hydraulic piston to lift the overhead router bit. The overhead router was shut down for repair.

[18] Mr. Nelles had reacted to Mr. Chilton's injury by laughing. Mr. Chilton says Mr. Nelles laughed loudly and sarcastically. Mr. Nelles, in his written response to an interrogatory by Mr. Chilton, admitted laughing, stating his laugh was a surprise reaction. Given that Mr. Nelles continued with the work on the D-piece, conduct that was incongruous with surprise or nervousness, I disbelieve Mr. Nelles' tendered explanation for laughing.

[19] Mr. Chilton has advanced his claim in tort. He alleged the defendant was liable due to recklessness, strict liability, negligence, and gross negligence. Clearly, on these facts, Mr. Chilton's

claim is in negligence. Negligence involves the failure by a person to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation resulting in injury to another person for whom the first has a duty of care (*Blacks Law Dictionary,* 8th ed., *s.v.* "negligence").

[20] Negligence is the breach of that duty to take care with regard to another person or his property. *Canada. v. Hochelaga Shipping & Towing Company Co.*, [1940] S.C.R. 153. Liability for negligence requires the following elements as stated in *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at paragraph 44:

- a duty of care exists by one party for another,
- a breach of that duty by the first party, and
- damage or injury to the second party resulting from the breach.

[21] There is no doubt that penitentiary officials have a duty of care towards inmates in custody in the penitentiary. In *Howley v. Canada*, [1973] F.C. 184, Justice Cattanach stated:

> In *Timm v. The Queen*, [1965] 1 Ex. C.R. 174 at p. 178 I stated the responsibility of the Crown toward inmates of penal institutions to be as follows:
>
> > Section 3(1) (a) of *The Crown Liability Act* S.C. 1952-53, c. 30 provides as follows:
> >
> > 3(1) The Crown is liable in tort for the damages for which, if it were a private person of full age and capacity, it would be liable
> > (a) in respect of a tort committed by a servant of the Crown, …

> and section 4(2) provides,
>
> 4(2) No proceedings lie against the Crown by virtue of paragraph (a) of subsection (1) of section 3 in respect of any act or omission of a servant of the Crown unless the act or omission would apart from the provisions of the Act have given rise to a cause of action in tort against that servant or his personal representative.
>
> The liability imposed upon the Crown under this Act is vicarious. Vide *The King v. Anthony and Thompson*, [1946] S.C.R. 569. For the Crown to be liable the suppliant must establish that an officer of the penitentiary, acting in the course of his employment, as I find the guard in this instance was acting, did something which a reasonable man in his position would not have done thereby creating a foreseeable risk of harm to an inmate and drew upon himself a personal liability to the suppliant.
>
> The duty that the prison authorities owe to the suppliant is to take reasonable care for his safety as a person in their custody and it is only if the prison employees failed to do so that the Crown may be held liable, vide *Ellis v. Home Office*, [1953] 2 All E.R. 149. [Underlining added]
>
> In *MacLean v. the Queen* [1973] S.C.R. 2 Mr. Justice Hall in delivering the unanimous judgment of the Supreme Court of Canada quoted my foregoing remarks (at page 6) as being the correct statement of law in this respect.

[22] In *Wild v. Canada*, 2004 FC 942, Justice Blanchard reiterated that prison authorities owe a duty to take reasonable care for the health and safety of the inmate while in custody.

[23] Counsel for the defendant admitted liability for the accident at the commencement of the trial. Counsel expressly acknowledged there are no issues as to the duty of care, the standard of care

or the causation of the accident. Counsel also confirmed that no issue arises with respect to contributory negligence by Mr. Chilton.

[24] I find on the facts and on the admission by defendant's counsel that the defendant is liable to Mr. Chilton for the breach of the duty of care that resulted in injury to Mr. Chilton.

What injuries did Mr. Chilton incur as a result of the accident, including if any, psychological or psychiatric sequela?

[25] Mr. Chilton claims damages arising from physical injury and loss of amenity. He further claims that, because of his pre-existing mental illness, his injury caused emotional stress that aggravated his pre-existing mental illness.

[26] Mr. Chilton has been receiving psychiatric treatment in the penitentiary from a number of psychiatrists for an extensive period of time. I find that the evidence does not establish the precise nature of Mr. Chilton's mental illness but it is clear he is afflicted by some significant psychological or psychiatric disturbance.

[27] Mr. Chilton testified at length about the injury to his left hand. It was in the nature of a crushing injury and therefore, he insisted, more painful. His thumb bled then and continued to bleed two days later. His thumbnail was partially torn and eventually fell off. Mr. Chilton provided a coloured drawing of his injured hand. He also provided a photo to show a blood blister still under his new thumbnail months later to prove his physical recovery took several months. Mr. Chilton

emphasized that he suffered excruciating pain as a result of the injury. In addition, he said he experienced shock, humiliation, and trauma as a result of being laughed at.

[28] Mr. Chilton stated that the major issue was the aggravation of his mental illness. He claimed that he was seriously afflicted by psychological or psychiatric sequela. Mr. Chilton not only described his psychiatric disturbance, he submitted a mathematical graph to illustrate his theory of how his mental illness was greatly aggravated by his emotional disturbance arising from the accident. He was claiming a "crumbling skull" where a breach of duty results in injury greater than expected.

[29] Mr. Chilton presented himself as an expert on mental illness. His self study and purported knowledge of his own condition does not satisfy me that he is qualified to provide expert opinion evidence on psychological disturbance or psychiatric illness. He has not undertaken any recognized course of study of psychiatry or psychology nor has he proven he has met any objective standard of knowledge of those subjects.

[30] Mr. Chilton accepted the competency of Dale Chalmers, the nurse who treated Mr. Chilton's injury on the day of the injury, February 16, 2000. Mr. Chalmers reported:

> Seen in the treatment room following an industrial-type accident to left thumb. Accident occurred approximately at 10:30 hours. On examination, involved nail in nail bed of left thumb. Laceration underside of left thumb about 2" long. Bleeding freely but easily controlled. Advised by the initiation of an injury report from his place of employment. Vaseline dressing to left thumb followed by dry dressing. To return to clinic as needed. Again advised to have instructor initiate injury report. No further treatment required.

[31] The second nursing entry by Dale Chalmers was made two days later on February 18, 2000, it reads:

> Inmate seen regarding injury of 16 February. Dressing on hand is crusted but with fresh bleeding. Dressing soaked off as it is at the base of the thumb nail. Open and oozing pressure on the thumb pushed expressed blood (old) through the laceration. Inmate encouraged to allow this to occur, Vaseline dressing and lube gauge applied. Will be assessed as required.

[32] The CORCAN furniture shop work time sheets show that Mr. Chilton returned to work after receiving treatment and continued working in the furniture shop that afternoon and the following week. Mr. Chilton's prompt resumption of work runs counter to his claim of severe injury or aggravation of his mental illness.

[33] Mr. Chilton called Dr. Michelle Boyd as a witness. Dr. Boyd is a psychiatrist who treated Mr. Chilton at the Regional Treatment Centre for a few months during the latter part of 2002 and early 2003. She did not see Mr. Chilton at the time he injured his thumb or during the period immediately after.

[34] Dr. Boyd has a degree in pharmacy and worked as a pharmacist for several years before going to Queen's Medical School. After medical school she went into her specialized area of practice. In the first year of her training she did clinical work with patients at the Hotel Dieu Hospital, Kingston General Hospital, in Kingston. During that period she treated patients for a variety of medical ailments. Dr. Boyd is certified as a psychiatrist by the Royal College of Physicians and Surgeons and is licensed to practice in Ontario by the College of Physicians and

Surgeons of Ontario. Although, Dr. Boyd was not qualified as an expert witness nor was her evidence submitted in accordance with *Federal Court Rules*, SOR 198-106, I accept her professional medical evidence arising from her own examination and treatment of Mr. Chilton.

[35] Mr. Chilton objected to the defendant's counsel eliciting opinion evidence during cross-examination of Dr. Boyd about Mr. Chilton's physical injury and about any psychological or psychiatric sequela arising from his thumb injury. Nonetheless, I accept Dr. Boyd's opinion evidence in order to be better informed given the only other witness to address that subject was Mr. Chilton himself. I deem Dr. Boyd's evidence in this regard to be necessary and sufficiently reliable given Dr. Boyd's qualifications, experience and examination of Mr. Chilton and his medical record.

[36] After reviewing the nursing notes, Dr. Boyd opined that Mr. Chilton incurred a minor laceration injury and received appropriate treatment for his thumb.

[37] Dr. Boyd also addressed the question of psychological or psychiatric sequela. Dr. Hillman was the psychiatrist who examined Mr. Chilton on March 11, 2000, less than one month after the February 16 injury and who made a note about Mr. Chilton's thumb injury. At the request of defence counsel, Dr. Boyd read into the record Dr. Hillman's Referral and Consultation Report, dated 11 March 2000. The salient part of her recitation (in italics) is:

> 1. Okay. The first line is:
> *"Stable re MSE."*
> which means stable with respect to medical status examination.
> *"Meds okay. Injury left - -*

> *work injury left thumbnail bed. No anxiety - - "*

[38] Dr. Boyd herself examined Mr. Chilton in late 2002 and early 2003. She also reviewed his psychiatric files. Dr. Boyd testified that, other than the note by Dr. Hillman, there was no documentation indicating that Mr. Chilton had ever complained about any psychological or psychiatric sequela arising from the thumb injury or from anyone at CSC laughing at him. Dr. Boyd did not recall Mr. Chilton ever making any complaint to her about physical symptoms or any psychological or psychiatric sequela arising out of his thumb injury. Dr. Boyd inferred from the absence of any complaints regarding the thumb injury in his medical records that the injury Mr. Chilton sustained on February 16, 2000, was, to him, of a minor nature.

[39] I find that Mr. Chilton suffered a relatively minor injury to his left hand on February 16, 2000: a bruised thumb and torn thumbnail accompanied by lacerations beside the thumb and on its underside. He received appropriate treatment for his injury after the accident.

[40] I do not doubt Mr. Chilton found his thumb injury painful at the time and that it likely affected him as an injury of that sort would affect any individual. His injury did heal and any pain or emotional upset would be similarly transient.

[41] I am mindful of the words of Chief Justice McLachlin in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27:

> This said, psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal

> injury at law connotes serious trauma or illness: see *Hinz v. Berry*, [1970] 2 Q.B. 40 (C.A.), at p. 42; *Page v. Smith*, at p. 189; Linden and Feldhausen, at pp. 425-27. The law does not recognize upset, disgust, anxiety, agitation, or other mental states that fall short of injury. I would not purport to define compensable injury exhaustively, except to say that it must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept. The need to accept such upsets rather than seek redress in tort is what I take the Court of Appeal to be expressing in its quote from *Vanek v. Great Atlantic & Pacific Co. of Canada* (1999), 48 O.R. (3d) 228 (C.A.): "Life goes on" (para. 60). Quite simply, minor and transient upsets do not constitute personal *injury*, and hence do not amount to damage. [Underlining added]

[42] I find that Mr. Chilton did not suffer any adverse psychological or psychiatric sequela or aggravation of his mental illness as a result of the injury to his thumb or accompanying circumstances.

Should the Court issue declarations concerning inmate work, health, and safety conditions in this action?

[43] Mr. Chilton seeks a number of declarations from the Court concerning inmate work, health, and safety conditions. More specifically he seeks the following:

> Pursuant to sections 3(a), 4(e), 69, 70 and 40(p) of the CCRA and sections 3, 4, 83(1), and 104.1(1)(b) of the CCRR and section 7 and 15(1) of the Charter of Rights and Freedoms the following:
>
> i) DECLARE the meaning of "dangerous", "safe", "safe working environment", "reasonable excuse" relative to the circumstances of an inmate of a penitentiary.
>
> ii) DECLARE that "reasonable excuse" as per section 40(p) of the CCRA gives an inmate the right to refuse work or leave work if the work involves an undue risk to a person, property or ridicule that attacks the dignity of an inmate while in a work area.
>
> iii) DECLARE if dangerous is a subjective judgment.

iv) DECLARE if dangerous includes exposure to material which may present a risk to future injury regardless of the quantification of risk.

v) DECLARE equality of inmates to staff with respect to all laws mentioned in section 83(1) of the CCRR.

vi) DECLARE that “security of the person” as per section 7 of the Charter of Rights is included in the term “security of the penitentiary” as per section 4(b) of the CCRR.

vii) DECLARE that “security of the penitentiary” includes inmate health and safety equally to staff of the Service.

viii) DECLARE that inmates have a right to Standard First Aid training, in all aspects of tools so that an inmate has sufficient information to make judgments of safe operation of tools, to diligent qualified instructors at community standards in a formal program.

ix) DECLARE that inmates have a right to a formal list of general and specific standard of health and safety rules with respect to penitentiary work equal to those in force for staff of the Service.

x) DECLARE that First Aid Kits be placed in such a manner that they are readily accessible to inmate workers.

xi) DECLARE that the Institutional Health and Safety Committee have inmate(s) as members.

xii) DECLARE that a positive duty exists on the Service to ensure that all staff are assessed and treated for psychological injury as a result of employment with hostile inmates to prevent abuse to inmates from injured staff who are untreated.

[44] For the purpose of considering these declarations, I have permitted Mr. Chilton to make his submissions as he chose since he is a self-represented litigant. I assume that he is objecting to a decision or a failure to make a decision by correctional officials rather than proposing something in the nature of a public inquiry which would be entirely outside the scope of this action.

[45] Mr. Chilton submits that the mandate of the Federal Court is to hear cases and then decide whether to issue a declaration to improve the management of the government vis-à-vis the rights of citizens, in this instance, inmates in penitentiaries. These declarations, he states, would result in a better and effective civil service that fulfills the safety needs of staff and the inmates and thus ensure that the purpose of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (*CCRA*) is met.

Absence of Evidence

[46] Mr. Chilton refers to several cases in support of his argument that since the defendant's negligence impacted his mental illness, he may seek declarations arising from a Charter rights breach. However, the cases cited by Mr. Chilton do not help his case.

[47] In *McCann et al v. The Queen*, [1975] F.C. 272, Chief Justice Jackett granted a declaration that segregation of prisoners in solitary confinement amounted to cruel and unusual treatment or punishment contrary to s. 2(b) of the *Canadian Bill of Rights*, 1960, c. 44. There was extensive evidence before the court concerning the deleterious effect of unnecessary solitary confinement on prisoners. In *Soenen v. Edmonton Remand Centre*, (1983) 3 D.L.R. (4th) 658 Justice McDonald agreed that, if a proven violation of a Charter right occurred, the courts should ensure prison authorities who administer the system comply with the Canadian constitution. Justice McDonald found that the acts complained of by the inmate did not amount to cruel and unusual punishment contrary to s. 12 of the Charter and dismissed the application. In each of these cases, the issue turned on evidence that proved or failed to prove a Charter rights breach.

[48] I have held that there was no evidence of any psychological or psychiatric harm to Mr. Chilton due to his injury or upset. Consequently, I conclude that there is no evidentiary basis for a declaration because of a Charter rights violation.

Alternative Statutory Remedy

[49] Mr. Chilton seeks declarations from the Court which he contends will address inmate work, health, and safety issues. An inmate grievance procedure is available for these issues. The Commissioner's Directive No 081: *Offender Complaints and Grievances* further expands on the grievance procedure outlined at sections 90-91 of the CCRA and sections 74-82 of the *Corrections and Conditional Release Regulations*. Collectively they provide a comprehensive and thorough grievance procedure that can address Mr. Chilton's issues. If the outcome is unsatisfactory, he has the right to seek judicial review of any decision in the Federal Court pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[50] There is authority that a statutory grievance procedure is an adequate alternative remedy that must be exhausted before initiating proceedings in the Federal Court. *Giesbrecht v. R.*, 148 F.T.R. 81 (Fed. T.D.). Justice Pelletier addressed the same question in *Marachelian v. Canada*, [2000] F.C.J. No. 1128 and provided the following explanation:

> The underlying rationale is that the statutory remedy is deprived of any relevance if it can be simply bypassed in favour of the Federal Court. One might add that the judicial resources should not be occupied dealing with problems for which another forum is provided.

[51] *Giesbrecht* and *Marachelian* deal with premature applications for judicial review. In *The Queen v. Grenier,* 2005 FCA 348, the Federal Court of Appeal addressed the question of a challenge to the lawfulness of a decision by an action for damages under section 17 of the *Federal Court Act* instead of by judicial review under sections 18 and 18.1 of that Act. An inmate had brought an action for damages challenging the lawfulness of a decision to impose administrative segregation instead of challenging the decision by judicial review. Justice Létourneau of the Federal Court of Appeal stated:

> To accept that the lawfulness of the decisions of federal agencies can be reviewed through an action in damages is to allow a remedy under section 17. Allowing, for that purpose, a remedy under section 17 would, in the first place, disregard or deny the intention clearly expressed by Parliament in subsection 18(3) that the remedy must be exercised only by way of an application for judicial review.

[52] After discussing reasons relating to the need for finality of decisions and avoiding promotion of indirect challenges, Justice Létourneau wrote:

> It is especially important not to allow a section 17 proceeding as a mechanism for reviewing the lawfulness of a federal agency's decision when this indirect challenge to the decision is used to obviate the mandatory provisions of subsection 18(3) of the *Federal Court Act.*

[53] I conclude that Mr. Chilton must pursue the statutory remedy available to him by way of the grievance and judicial review process and that he is precluded from seeking declarations by way of an action for damages under section 17 of the *Federal Court Act*.

Private Litigants

[54] Finally, Mr. Chilton comes to court as a private litigant. He is entitled to seek damages for himself. He is not entitled to use the court as an indirect means of altering policy decisions by means of generally worded declarations. In *Trang v. Alberta*, 2007 ABCA 263, Justice Slatter of the Alberta Court of Appeal noted that even an inmate who might be injured in the transport of prisoners in an unsafe van would only be entitled to damages, not a declaration effectively requiring the government to alter prisoner transport vehicles to improve safety.

[55] I would note that a purpose for courts holding parties responsible for negligence is to encourage responsible behaviour by those who owe a duty of care and deter careless conduct. Given the success of his claim for negligence, Mr. Chilton has accomplished the objective of reminding the Warkworth Institution officials to attend to the safety of inmates working in the CORCAN furniture shop.

[56] For the foregoing reasons, I conclude that this is not a case for making the declarations sought by Mr. Chilton.

What damages should be assessed for Mr. Chilton's injury?

[57] Mr. Chilton submits that damages must not only reflect his physical injury, but also the aggravation of his mental illness. He cites a number of cases including *Tsougrianis v. Marrello and Marrello Construction Ltd.*, [1998] B.C.J. No. 2787 $50,000, *Moss v. Wilson*, 2007 NLTD 31 $5,000, *Turczinski v. Dupont Heating & Air Conditioning Ltd.*, [2002] O.J. No. 2295 (OnSCtJus)

$35,000, *Miksch v. Hambleton*, [1990] B.C.J. No. 1810 (BCSC) $35,000, *Strawbridge v. Doe*, [1994] B.C.J. No. 386 (BCSC) $9,000, *Boothman v. Canada*, [1993] F.C.J. No. 400 $10,000, *Linberg v. Siu*, 2006 BCSC 1349 $15,000, *Perison v. Deol*, 2002 BCSC 671 $6,000, and *Raivich v. Gero*, [1993] B.C.J. No. 70 $13,000. Many of Mr. Chilton's cases involve damage awards for psychological or psychiatric injury which are not relevant in his case as I have found there to be no injury of that kind.

[58] Counsel for the defendant cites *O'Brien v. Universal Property Management Ltd.* 2005 NBQB 148 $2,000, *Sam v. British Columbia (Ministry of Public Safety and Solicitor General)* 2005 BCSC 331 $2,000, *Leeman v. Stoddard* 2004 NBQB 348 $2,000, *McLean v. Booth* 2006 ABQB 390 $1,000, *Hoar (Guardian ad litem of) v. Board of School Trustees, District No. 68 (Nanaimo)* [1982] B.C.J. No. 636 $10,000, *Haley v. Reade* [2000] N.B. J. No. 351 $10,000, *de Groot v. Arsenault* [1999] M.J. No. 489 $10,000, *Erbatur v. Kane* [1999] B.C.J. No. 1522 $2,500. Counsel submits the range for the damage award should be $1,000 to $2,000 with prejudgment interest at 5% in accordance with the *Federal Rules of Court* direction to apply the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[59] The injury occurred at Warkworth Institution in Ontario. A review of awards for somewhat similar injuries in Ontario discloses: *Nevelson v. Murgaski* [2006] O.J. No 3132 $1,000, *Brown v. Canadian Tire Corp.* [2000] O.J. No. 4722 $1,000, *King v. Ontario* [2002] O.J. No 4766 $2,500, and *Bridgelall v. Managar* [2001] O.J. No. 1523 $5,000.

[60] I find that the appropriate award of damages for Mr. Chilton's injury is $2,500. Prejudgment interest will be at a rate of 5 percent.

[61] Given that Mr. Chilton represented himself there are no legal costs to be compensated for. He is entitled to reimbursement of his actual expenses incurred in this action.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The Defendant is liable in negligence for the injury incurred by Mr. Chilton.
2. Mr. Chilton is awarded $2,500 for his injury including pain and suffering and loss of amenity.
3. Prejudgement interest in the amount of 5 percent.
4. Mr. Chilton is awarded disbursements only.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-117-02
STYLE OF CAUSE:	MURI PEACE CHILTON v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
PLACE OF HEARING:	Peterborough, Ontario
DATE OF HEARING:	February 25-28, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	MANDAMIN J.
DATED:	September 17, 2008

APPEARANCES:

Muri Peace Chilton	FOR THE APPLICANT
Joel R. Levine	FOR THE RESPONDENT

SOLICITORS OF RECORD:

n/a	SELF-REPRESENTED APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT