Federal Court  Cour fédérale

Date: 20130319

Docket: T-828-09

Citation: 2013 FC 288

Toronto, Ontario, March 19, 2013

PRESENT: Kevin R. Aalto, Esquire, Prothonotary

BETWEEN:

IMAD HERMIZ

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

Introduction

[1] Imad Hermiz was on day parole. Less than a month later his day parole was suspended because an inmate at the institution where Mr. Hermiz had been incarcerated told a correctional officer who told Mr. Hermiz's parole officer that the inmate's wife had been threatened. The inmate intimated that it was Mr. Hermiz along with two others who had threatened his wife. On the basis of this uncorroborated allegation, Mr. Hermiz's day parole was immediately suspended and he was incarcerated a further 83 days until September 9, 2008 when the National Parole Board (now

known as the Parole Board of Canada and hereinafter referred to as PBC) again released him to continue his day parole.

[2] At the time his day parole was suspended, Mr. Hermiz was gainfully employed. He brings this action for damages founded in the torts of misfeasance in public office, false imprisonment and negligence. He also alleges that his *Charter* rights were breached and therefore Correctional Services Canada (CSC) is liable for damages.

Summary of Facts

[3] Mr. Hermiz was sentenced to a penitentiary term of three years and six months on March 7, 2007 arising from a stabbing incident at a party which resulted in Mr. Hermiz being convicted of manslaughter. He was incarcerated at the Fenbrook Institution (Fenbrook), a medium security penitentiary located near Gravenhurst, Ontario. While in Fenbrook, he briefly encountered another inmate, Jason Bolan. Mr. Hermiz described Mr. Bolan as an acquaintance.

[4] While incarcerated Mr. Hermiz was involved with drugs. There are several misconduct reports regarding his conduct involving the use of marijuana.

[5] The fact of his involvement in the use and selling of drugs was referred to in the notice of the PBC when Mr. Hermiz was granted conditional day parole on May 21, 2008. He was released on day parole to reside at the St. Leonard's Peel Halfway House in Brampton. The Greater Toronto West Parole Office was assigned the duty of supervision of Mr. Hermiz and Hamza Al-Baghdadi was appointed as his parole officer.

[6] On June 18, 2008, Mr. Bolan was stabbed in Fenbrook. Mr. Bolan told Ms. Holly Goldthorp, a Security Intelligence Officer (SIO) at Fenbrook that he was being pressured to have his wife smuggle a package of drugs into Fenbrook. Mr. Bolan also apparently stated that some three weeks prior to the stabbing three men had shown up at his house and threatened his wife to get her to take a package to him. Mr. Bolan attributed the stabbing to the refusal of his wife to take the package. Mr. Bolan accused Mr. Hermiz of being one of the three men. There was no evidence that the alleged threat to Mr. Bolan's wife was reported to any authority at the time of the threat. Mr. Bolan did not give evidence at the trial nor did Mrs. Bolan.

[7] In turn, Ms. Goldthorp reported to Mr. Al-Baghdadi the fact of Mr. Bolan's stabbing and his story about the threat to his wife and his allegation that Mr. Hermiz was involved.

[8] Upon receipt of this information Mr. Al-Baghdadi in conjunction with the Parole Supervisor, Philip Schiller, determined that Mr. Hermiz's day parole should be suspended and that he should be returned to prison.

Evidence at Trial

[9] At trial, evidence was given by Mr. Hermiz, Ms. Goldthorp, Mr. Al-Baghdadi and Mr. Schiller. As noted, neither Mr. Bolan nor his wife testified. Thus, there was much hearsay evidence. No objections were made to the hearsay.

Evidence of Mr. Hermiz

[10] Mr. Hermiz gave evidence and was cross-examined. He had been sentenced to a penitentiary term of three years and six months in March, 2007. While in Fenbrook he said that he briefly encountered Mr. Bolan but they were not friends. He frankly admitted to his involvement with marijuana while an inmate. When he was granted conditional release on May 21, 2008 the PBC was aware of his involvement with drugs. Notwithstanding, he was granted conditional release to reside at St. Leonard's Peel Halfway House in Brampton.

[11] On June 18, 2008 Mr. Hermiz testified that his day parole was suspended and that he was held in a provincial facility pending a post suspension review. He said that his parole officer gave the reason of "deteriorating behaviour" as the reason his day parole was suspended. He denied any alleged wrongdoing.

[12] During the time of his brief release Mr. Hermiz had been employed. Mr. Hermiz was imprisoned for 83 days before being released again by the PBC. However, subsequent to his re-release he obtained employment with Kraft Canada Inc. at $21.50 per hour [pay stubs, Joint Book of Documents Tabs 55 – 62]. It is unclear in the record what his remuneration was during the period of his first release.

[13] In a vigorous cross-examination regarding his involvement with drugs, Mr. Hermiz admitted to the use of marijuana perhaps three times. Although at times he appeared to be a bit smug, he gave evidence in a forthright and believable manner. I accept his evidence and more particularly

with respect to the alleged incident involving Mrs. Bolan about which more will be said later in these reasons.

Evidence of Holly Goldthorp

[14] The evidence of Ms. Goldthorp was that she had been employed by CSC since 1995 and was an acting SIO at the time of the stabbing of Mr. Bolan in 2008. Subsequently she became a fulltime SIO.

[15] She described the position of SIO as the person who coordinates and administers the Intelligence Program within a penitentiary. That Program involves, *inter alia*, contributing to a safe and secure environment for staff, the offenders and the public; making recommendations regarding all aspects of security; and, planning and conducting strategic security evaluations as well as tactical security investigations to prevent or mitigate threats to individuals.

[16] Ms. Goldthorp also described prison subculture particularly as it relates to drugs. She described the hierarchy within Fenbrook including the role of the leaders and particularly "enforcers", "runners" or "mules". Enforcers use intimidation tactics to achieve specific results such as the collection of a debt while mules transport drugs or contraband into the institution. Runners move the illicit goods throughout the institution.

[17] She also gave evidence about the “code of silence” and “rats” and other elements of prison subculture. For purposes of this case, while interesting background, it is not determinative of the issues.

[18] Of specific importance is the incident which Ms. Goldthorp investigated on June 19, 2008. She described a visit with an inmate, Jason Bolan, to discuss the status of his wife's impending visit on June 22, 2008.

[19] Ms. Goldthorp detailed the meeting with Mr. Bolan in a number of documents filed at trial [Joint Book of Documents, Tab 36, 39 and 43]. These documents record the conversation with Mr. Bolan and his allegation that he was being pressured to have drugs delivered to Fenbrook via his wife. He alleged that Mr. Hermiz had attended at his home to give a package to this wife.

[20] One of the documents prepared by Ms. Goldthorp, the Protected Information Report [Joint Book of Documents, Tab 36] was faxed to Mr. Al-Baghdadi. This followed a telephone conversation with Mr. Al-Baghdadi wherein Ms. Goldthorp reported on the conversation and meeting with Mr. Bolan.

[21] In her evidence, Ms. Goldthorp referred to a Commissioner's Directive 568-2 which provides an evaluation of the reliability of information collected by an SIO. Ms. Goldthorp said that in her view the information she received from Mr. Bolan was believed reliable in accordance with the Commissioner's Directive 568-2. She believed the information to be reliable because of the physical evidence of an attack on Mr. Bolan; that he provided a consistent account of events to Correctional Officers and an O.P.P. Officer who subsequently interviewed him; and that he expressed fear for his own safety and that of his wife. Mr. Bolan did not identify his attacker(s), Ms. Goldthorp interpreted this as being consistent with the institutional sub-cultures "code of silence" or "inmate code". She indicated she had no information that Mr. Bolan was lying to her in

order to "frame" Mr. Hermiz or that he provided the information for any other purpose other than his concern for his wife's safety and his own safety.

[22] During her cross-examination, Ms. Goldthorp described her meeting with Mr. Bolan in greater detail. She frankly admitted that it was very important for her to track down the instigators and why the stabbing of Mr. Bolan occurred. Mr. Bolan did not provide any names because of the "inmate code". However, she obtained information that there was a physical mark on one of the aggressors. Ms. Goldthorp indicated that a check was done of inmates to determine if there was any marking consistent with the injuries as described by Mr. Bolan on one of the aggressors. Ms. Goldthorp conceded that there was no document which recorded any injuries to any inmate consistent with what Mr. Bolan described.

[23] Ms. Goldthorp also conceded that inmates such as Mr. Bolan could not receive phone calls from outside the institution but could only place phone calls and that such phone calls were tracked. Ms. Goldthorp conceded that she did not look at the list of calls Mr. Bolan made to his wife to determine when in fact any phone call was made. It is also telling that Ms. Goldthorp admitted that Mr. Bolan did not provide a description of the persons who had visited his wife. She understood from her conversation with Mr. Bolan that the visitation had occurred in the previous week. The only information Ms. Goldthorp had concerning the visitation and any threats came directly from Mr. Bolan. Ms. Goldthorp described that the only check she did was with reference to the institutional bed history and determined that Mr. Hermiz and Mr. Bolan had lived together on the same range for a number of months. She had never met Mr. Hermiz. Ms. Goldthorp frankly

admitted that she had no information from Mrs. Bolan regarding any visitation or any telephone calls and that she relied solely on what she had been told by Mr. Bolan.

Evidence of Mr. Al-Baghdadi

[24] Mr. Al-Baghdadi was Mr. Hermiz's parole officer. He gave evidence that he had been a parole officer in the Toronto West Area Parole Office from August, 2007 to August, 2009. Subsequently, he took a position in the Ottawa Area Parole Office. He described the role of parole officers working outside of the institutions in offices such as the Toronto West Area Parole Office. He described his role as supervising and encouraging offenders to reintegrate into society and become law abiding citizens in the community after released from an institution on parole. He said that as a parole officer his duties are guided by the "paramount consideration of protection of the public".

[25] His initial interview with Mr. Hermiz took place on May 21, 2008. Prior to his initial meeting with Mr. Hermiz, Mr. Al-Baghdadi said he reviewed Mr. Hermiz's file [Joint Book of Documents, Tabs 1-30]. His file contains references to involvement with drugs but also contains comments such as:

> Since arriving at Fenbrook Institution, there have been no noted adjustment concerns, he has been co-operative with both staff and other inmates. He has not incurred institutional charges, nor has there been any urinalysis tests requested.
>
> . . .
>
> Mr. Hermiz is considered compliant with his Correctional Plan. He attends school (ABE IV) and works part-time as a cleaner. He is in receipt of Level C pay.
>
> . . .

> It is believed that through individual counselling, Mr. Hermiz will gain insight into himself and his perceived inadequacies. It is postulated that said inadequacies contributed to his decision to carry a weapon and act with bravado in a situation which called for restraint and had tragic consequences. His risk to re-offend in a similar manner is considered remote.
>
> [Joint Book of Documents, Tab 27]

[26] In addition to the initial interview which took place on May 21, 2008, Mr. Al-Baghdadi indicated that he had further meetings with Mr. Hermiz on May 28, June 2, June 10 and June 18, 2008. Notes relating to these meetings were also filed as exhibits at trial [Joint Book of Documents Tab 25 and Tab 31]. The notes of Mr. Al-Baghdadi from the initial intake interview contain the following observations:

> . . . He [Mr. Hermiz] presented as polite and was forthcoming with information. The offender was asked to share his thoughts on his present release. He indicated that his sentence has been a good deterrent and regrets his past actions. ...the offender denied any recent institutional drug use and stated the last time he used THCO was approximately three-weeks ago. The offender was cautioned that drug use will not be tolerated in the community and that he could be subject to regular interval urinalysis testing. The offender indicated that it was no problem and expressed his willingness to abide by the terms and conditions to his release.
>
> He advised he understood all of this rights and responsibilities and ensured this writer that there would be no issues with his release. . . .
>
> [Joint Book of Documents, Tab 31]

[27] Mr. Al-Baghdadi also had notes of his interview with the common-law spouse of Mr. Hermiz whom he found to be "forthcoming and pleasant throughout the interview and appears to be a good source of community support for the offender".

[28] It is also to be noted that in the document found at Tab 25 of the Joint Book of Documents the following entry is found:

> The Security Intelligence Office (SIO) was contacted on 2008-01-10 and revealed no intelligence information of concern and confirmed that Mr. Hermiz is not the focus of any extraordinary attention from the Security Intelligence Department (SID).

[29] There appears to be nothing negative in Mr. Hermiz's parole file relating to drugs or other conduct except that Mr. Hermiz should not be involved with drugs or illicit substances.

[30] Mr. Al-Baghdadi then described the phone call he received from Ms. Goldthorp on June 19, 2008. Based solely on the information received from Ms. Goldthorp, Mr. Al-Baghdadi held a case conference with his Supervisor, Phil Schiller, and it was determined that Mr. Hermiz's day parole should be suspended and a warrant of suspension and apprehension issued [Joint Book of Documents, Tabs 21, 31, 35, 40 and 41].

[31] Mr. Al-Baghdadi gave evidence that so far as he was concerned the information received from Ms. Goldthorp was consistent with Mr. Hermiz's history. He advised that because Mr. Hermiz had been incarcerated for killing a person using a hunting knife; had a history of trafficking drugs inside correctional institutions; and, as the source of the information (Mr. Bolan) was credible, that the imminent risk to public safety governed and Mr. Hermiz's parole should be revoked.

[32] In an effort to substantiate the story received from Ms. Goldthorp, Mr. Al-Baghdadi called Mr. Bolan's wife to obtain further information. He said that when he asked her for details of who it was that visited her she stated that it was dark and the individuals were wearing heavy coats so she could not describe them. She indicated that the incident occurred three months prior. It is to be noted that while all of this is hearsay, if Mrs. Bolan's evidence is correct that the incident occurred three months prior then the incident involving the individuals attending at her home occurred sometime in mid-April. This was a time at which Mr. Hermiz was still an inmate at Fenbrook.

[33] Following the suspension of Mr. Hermiz's parole, Mr. Al-Baghdadi met with Mr. Hermiz on June 23, 2008 at the Maplehurst Detention Centre to do a post-suspension interview. At this time, Mr. Hermiz did admit to having being involved in the drug culture at Fenbrook. It is also notable that Mr. Hermiz requested that Mr. Al-Baghdadi consult the "CRF log book" at the half-way house to determine whether or not he was absent at the time of any alleged visit to Mrs. Bolan.

[34] Mr. Al-Baghdadi did not review the log book. In any event, if Mrs. Bolan's recollection that the event occurred three-months prior to June, checking the log book would be of no assistance as Mr. Hermiz would still have been an inmate. Mr. Al-Baghdadi gave further evidence that there was consideration as to whether or not the suspension should be revoked but a decision was made that based on the circumstances as they then existed and Mr. Bolan's story and Mr. Hermiz's admission of involvement of the drug culture that his parole would remain suspended. He was therefore transferred to the Kingston Penitentiary Temporary Detention Unit.

[35] Mr. Al-Baghdadi was cross-examined at some length. In cross-examination, Mr. Al-Baghdadi conceded that he was operating solely on information received from Ms. Goldthorp and his subsequent telephone conversation with Mrs. Bolan. He did state in his evidence that as he understood the situation Mr. Bolan "concluded that Mr. Hermiz may have been in that party", [emphasis added] being the party that attended at Mr. Bolan's wife's residence. Mr. Al-Baghdadi conceded that the description of the individuals attending at Mrs. Bolan's house that would lead to Mr. Hermiz's implication in this matter would be very important.

[36] Mr. Al-Baghdadi stated that it was not his role to determine the description that was given by Mr. Bolan of Mrs. Bolan. He was pressed in cross-examination as to the description of the individual who attended at Mrs. Bolan's home. Mr. Al-Baghdadi conceded that it would highly relevant for him to have that description. Mr. Al-Baghdadi reiterated that it was not his role to get the description and that he relied upon the information from Ms. Goldthorp which was "believed to be reliable but not confirmed". During his evidence, Mr. Al-Baghdadi appeared to be somewhat nervous and apprehensive in answering questions particularly relating to the role of Mr. Hermiz and the information obtained regarding the visit to Mrs. Bolan. However, Mr. Al-Baghdadi did deal directly with his conversation with Mrs. Bolan. He speculated that she was being uncooperative but when he asked her regarding the visit from the three individuals his report to the PBC records the following:

> . . . The collateral [Mrs. Bolan] confirmed to the undersigned [Mr. Al-Baghdadi] that three individuals did, in fact, attend her residence with a package, but she was unable to identify any of them, as it was dark outside and they were wearing winter coats. The undersigned was curious to know why these individuals would be wearing winter coats if this incident reportedly took place in late May, early June. When confronted with this, the collateral indicated that the

> occurrence took place approximately three months ago, contrary to inmate BOLAN's account.
>
> In light of BOLAN's wife's safety concerns, the Toronto Police Criminal Investigation Bureau was contacted and asked to investigate this matter. Accordingly, police were in touch with the contact who denied having any safety concerns, once again, contrary to inmate BOLAN's claim.
>
> [Report dated July 11, 2008, Joint Book of Documents, Tab 45]

[37] It also appears from the evidence that Mrs. Bolan did not contact the police regarding this incident but they contacted her.

[38] Mr. Al-Baghdadi conceded that it was possible that Mr. Hermiz could have been confined to the half-way house while an investigation ensued. However, Mr. Al-Baghdadi chose not to pursue this approach. This is so notwithstanding that the *Corrections and Conditional Release Act*, S.C. 1992, c.20 (*CCRA*), has a provision involving the liberty of the subject to use the least restrictive means necessary. Mr. Al-Baghdadi confirmed this was the case but determined this was not a situation where house arrest in the half-way house was satisfactory. Notably, Mr. Al-Baghdadi noted that a half-way house is a "very controlled, structured environment that we use as a tool to assist offenders and their reintegration efforts, to transition them slowly".

[39] Mr. Al-Baghdadi also gave evidence concerning the CRF log book. Mr. Al-Baghdadi's report has the following observation:

> . . . While CRF log book could confirm where HERMIZ was on the day in question, it is not entirely reliable as the offender could have easily mislead CRF staff with regards to his activities outside the CRF.
>
> [Joint Book of Documents, Tab 45]

[40] When asked specifically whether he ever went to the half-way house to check the sign out sheets for Mr. Hermiz, Mr. Al-Baghdadi said "I saw no reason to do so because we do not know the exact time frame, nor is the log book considered reliable because it is based on self reported information".

[41] Mr. Al-Baghdadi was then questioned concerning curfews at the half-way house and conceded that for new arrivals at a half-way house the curfew would be 5:30 p.m. He also conceded that it would be "useful" information to find out if he was outside of the house after 5:30 p.m. During this lengthy exchange, Mr. Al-Baghdadi became somewhat evasive regarding his information about Mr. Hermiz's job and the hours that Mr. Hermiz would have worked. During this continued exchange, Mr. Al-Baghdadi repeated that the log book was not deemed reliable and he took no steps to ensure that Mr. Hermiz had in fact attended at his employers during the three-week period prior to this incident.

[42] A further notable exchange in cross-examination occurred in the report that Mr. Al-Baghdadi made to questions from the PBC regarding the suspension. In that report, Mr. Al-Baghdadi had referred to Mr. Hermiz as "superficial and arrogant". He conceded that observation was based on his observations of Mr. Hermiz during interviews. He conceded further there is nothing in this notes that supports that conclusion. What is in his notes is that Mr. Hermiz presented as "polite and articulate." And further, Mr. Al-Baghdadi admitted in cross-examination that based on the information that he had at the time, Mr. Hermiz presented well and in a manner that is very positive.

[43] On balance, while Mr. Al-Baghdadi gave his evidence in a relatively forthright manner, he was particularly evasive in respect of questions dealing with the investigations that he made concerning Mr. Hermiz's involvement in the attendance at Mrs. Bolan's home.

Evidence of Philip Schiller

[44] Mr. Schiller was the Parole Office Supervisor at the Toronto West Area Parole Office.

[45] The thrust of his evidence in chief was that concern for public safety overrides all other interests particularly when information received from a suspect or an informant may have been recanted due to intimidation or other improper purpose. Mr. Schiller described his meeting with Mr. Al-Baghdadi following the telephone call that Mr. Al-Baghdadi had with Ms. Goldthorp.

[46] Mr. Schiller gave evidence that based on the information relating to the attack on Mr. Bolan and the visit to Mrs. Bolan's house, that Mr. Hermiz posed an unacceptable risk to society and therefore Mr. Hermiz's day parole was suspended.

[47] Mr. Schiller conceded in cross-examination that prior to these allegations being made by Mr. Bolan, Mr. Schiller had no information that Mr. Hermiz was not a manageable risk in the community. Mr. Schiller made it clear that the foundation of the decision to suspend Mr. Hermiz's parole was based on the information received from Ms. Goldthorp who believed the information she had to be reliable. For Mr. Schiller "that was a paramount issue for me, and that was the overriding feature." Further, in cross-examination, Mr. Schiller indicated that he did not rely upon the CRF log book and that it would not have been a "relevant feature" in his decision making. He also indicated

that he did not check to see if there had been any violation in Mr. Hermiz's curfew at the half-way house. This exchange is particularly indicative of the defensive approach of Mr. Schiller:

> Q: So your decision was based on what Mr. Al-Baghdadi told you that the Security Intelligence Officer had told him, that Mr. Bolan had told the Security Intelligence Officer, and that the wife had told Mr. Bolan.
>
> A: Yes, and when the Security Intelligence Officer wrapped up all that information and put it on with a bow and indicated that it was reliable, that was all I needed to issue a warrant to protect the community and remove Mr. Hermiz from the community so that it could be safer."

[48] Mr. Hermiz was neither charged for being involved in the stabbing incident nor for any involvement in the alleged threats to Mr. Bolan's wife.

PBC Decision

[49] Following his return to the penitentiary, a recommendation to the PBC dated July 11, 2008 [Joint Book of Documents, Tab 45] was prepared by Mr. Al-Baghdadi. His recommendation was that the day parole of Mr. Hermiz be revoked. In his report, in addition to his notes regarding his conversation with Mrs. Bolan transcribed above at para. 34, Mr. Al-Baghdadi made the following comments:

> Although the offender [Mr. Hermiz] was only in the community for a very brief time, he clearly projected the image of an arrogant and superficial individual. He tends to deny or minimize his current breach and clearly displays no regard for court-imposed sanctions and the expectations of conditional release. Given the short period of time HERMIZ was in the community, there is no noted progress in this case.
>
> . . .

> . . . While the offender denied allegations of being involved in criminal activities while in the community, he did admit to being involved in the institutional drug- subculture. Clearly, the offender continues to harbour pro-criminal values and attitudes and pro-criminal associates and attachments. He presents as very arrogant and superficial and appears to have continued to be involved in criminal activity during both pre- and post-release with no apparent insight. The prognosis for change is very poor and his overall risk for re-offence remains high. Risk for continued release is considered unmanageable at this time and a recommendation for revocation is appropriately submitted. This recommendation is believed to be in keeping with public safety and least restrictive measures.

[50] The observations in this report have a defensive tone and do not reflect the observations made in the original intake interview wherein Mr. Al-Baghdadi recorded in his notes that "he [Mr. Hermiz] presented as polite and was forthcoming with information" and "risk appears manageable at this time". At a subsequent interview it is further noted "The offender reports that he has adjusted to the CRF and is content with his present situation. HERMIZ was pleasant and polite throughout the interview and expressed his satisfaction with his present situation to the writer by stating that he was glad to be out in the community and will make the most of this opportunity." [Casework Record Log, Joint Book of Documents, Tab 31]

[51] The PBC reviewed the circumstances surrounding the suspension of the day parole. In doing so, the PBC posed several pointed questions to the parole officers regarding Mr. Hermiz. The relevant questions are summarized as follows together with Mr. Al Baghdadi's responses:

i. Is there any information as to an exact date when the incident in question happened?

> We are unable to ascertain the credibility of either of the above accounts or the exact date that the offender allegedly contacted Mrs. Bolan. For further information, the reader is referred to the Protected Information Report dated 2008-06-19 (Protected "C") and the Officer's Statement/Observation Report (Protected "C") dated 2008-06-20 which have been faxed to the NPB under separate cover. Said reports

> indicate that Mr. Bolan believes that Mr. Hermiz attended his wife's residence with 2 unknown males shortly after his release, as per information he attained from his wife. In speaking with Mrs. Bolan, she now denies that this occurred, however, it is our belief that she has recanted her version of events due to fear for her safety. We do not know who the other two individuals are. Given that it is our belief that the offender contacted Mrs. Bolan with the intent of forcing her to bring contraband into the institution, it is also our belief that risk to the community is not manageable at this time.

ii. Was the log book reviewed and if so was there any information available that would either confirm or dispute the subject's claim as to his activities?

> The CRF log book is based on self-reported information from offenders. As such, the log book cannot be relied upon solely as it is not always completely accurate nor a fully reliable source of information. That is, offenders can write where they are going but short of following them or having surveillance conducted on them via police, we are not always able to ensure that this is actually where they go.

iii. Elaborate and provide further information as to subject's behaviour on release which supports the observation that the subject was "projecting an image of an arrogant and superficial individual".

> The above statement is based on the undersigned's observations and general perceptions of the offender, given the brevity of time that he was in the community. During supervision interviews, he presented as polite and articulate, but his responses clearly suggested an effort to project positively with little genuine insight into his behaviour. As such, the writer assessed him as superficial and arrogant.
>
> [Addendum to Assessment for Decision, Joint Book of Documents, Tab 46]

[52] With respect, the answers to these questions have an air of defensiveness about them, particularly the about face concerning the attitude of Mr. Hermiz. At no time did the parole officers have any direct and convincing evidence that Mr. Hermiz was one of the three males, dressed in heavy coats, who attended at Mrs. Bolan's home.

[53] The PBC reviewed the answers as well and referred to the inconsistencies in evidence regarding the incident involving Mrs. Bolan. The PBC issued a further Day Parole Certificate on September 9, 2008 at which time Mr. Hermiz was again released to the Toronto West Parole Office and the St. Leonard's Peel Halfway House. In its Reasons for Decision the PBC made the following observation:

> **REASONS FOR DECISION (S) AND/OR VOTE(S)**
>
> After a thorough review of all available file information and listening to your comments, as well as those of your assistant and your parole officer, the Board has decided to cancel the suspension of your day parole release. At today's hearing the Board thoroughly discussed your involvement in the incident that led to your suspension. As before, you denied any knowledge of the incident, but did acknowledge that you knew the offender that was stabbed at Fenbrook Institution. Further, you informed the Board that you could not understand why you would be accused as your previous contact with this offender had been amicable.
>
> When questioned by the Board regarding the 'log book', you indicated that if you had been informed when this offence had occurred, you would have been able to defend yourself suggesting the 'log book' would indicate those times when you had been absent from the community-based residential facility. However, you were never informed when this incident occurred and, therefore, could not prepare any defence or provide any proof regarding your innocence.
>
> The Board also discussed your behaviour at the community-based residential facility and your relationship with the halfway house staff, as well as with your parole officer. You indicated that you felt you were respectful of the rules and compliant with the conditions of the residential facility. You also indicated that you always signed the 'log book' accurately and honestly regarding your whereabouts. With respect to your community parole officer, you further stated that you had always tried to follow instructions and attempted to present respectfully.
>
> At today's hearing the board found you to be open and forthcoming with information and, at no time, did you present as arrogant or superficial. Although this incident has been referred for police involvement you have not been charged, and no charges are expected.

> **As a result the Board has decided that, in light of the absence of reliable and persuasive information regarding the allegations that led to your suspension, risk for re-offence has not become undue and risk remains manageable in the community. As such, the suspension of your day parole release is cancelled.**
>
> [emphasis added - Decision of PBC, September 9, 2008, Joint Book of Documents, Tab 53]

[54] The Crown argued that no regard nor weight be given to the PBC decision as it was neither relevant nor probative of any issue in the case. It was argued that the PBC decision does not contain any findings about the conduct of the parole officers or the investigative process leading to the suspension of Mr. Hermiz's parole.

[55] However, the PBC posed various questions regarding the suspension and determined in its decision that there was no "reliable and persuasive information" substantiating the suspension of parole. As the decision is the result of a public hearing and decision of the PBC, the Court may have reference to the decision in deciding this case. While it is not determinative of the outcome of this case it is a factor to be considered in light of all of the evidence, given that there was no direct evidence of the involvement of Mr. Hermiz in any wrongdoing relating to the alleged incident at Mrs. Bolan's home. Counsel for Mr. Hermiz did not argue that the PBC decision was binding but simply a piece of evidence to be considered.

Issues

[56] From these facts a number of issues arise:

a. Did the parole officers act maliciously towards Hermiz?

b. Did the parole officers meet a reasonable standard pursuant to the *Corrections and Conditional Release Act* regarding suspension of Mr. Hermiz's parole?

c. If the Parole Officer did not meet a reasonable standard what damages, if any, is Mr. Hermiz entitled to receive?

d. What weight should be given to the PBC decisions?

Discussion

[57] Turning to the first issue it is alleged by Mr. Hermiz that both Mr. Al-Baghdadi and Mr. Schiller acted maliciously towards him. In my view of the evidence, while the two parole officers involved acted precipitously based solely on uncorroborated hearsay information, they were acting within the scope of their duties and did not act maliciously towards Mr. Hermiz. They may have acted precipitously as is further discussed below, but I find they did not deliberately set out to harm Mr. Hermiz. That may have been the obvious result of their conduct but it was not the motivation. However, that they did not act maliciously is not the end of the analysis as several causes of action are alleged.

[58] The totality of the evidence demonstrates that both parole officers exercised their judgment based upon what they believed to be reliable evidence. They did so in good faith believing it was in the best interest of the public and public safety. While they acted with an honest belief that they were acting in the best interest of the public and public safety, this does not mean that their decision was necessarily correct or reasonable in all of the circumstances. Nor does it mean that Mr. Hermiz is without remedy.

[59] It is useful to consider the legislative scheme which applies to inmates and parole. The *CCRA* provides as follows as in Section 135:

	SUSPENSION, TERMINATION, REVOCATION AND INOPERATIVENESS OF PAROLE, STATUTORY RELEASE OR LONG-TERM SUPERVISION	SUSPENSION, CESSATION, RÉVOCATION ET INEFFECTIVITÉ DE LA LIBÉRATION CONDITIONNELLE OU D'OFFICE OU DE LA SURVEILLANCE DE LONGUE DURÉE	
Suspension of parole or statutory release	**135.** (1) A member of the Board or a person, designated by name or by position, by the Chairperson of the Board or by the Commissioner, when an offender breaches a condition of parole or statutory release or when the member or person is satisfied that it is necessary and reasonable to suspend the parole or statutory release in order to prevent a breach of any condition thereof or to protect society, may, by warrant,	**135.** (1) En cas d'inobservation des conditions de la libération conditionnelle ou d'office ou lorsqu'il est convaincu qu'il est raisonnable et nécessaire de prendre cette mesure pour empêcher la violation de ces conditions ou pour protéger la société, un membre de la Commission ou la personne que le président ou le com-missaire désigne nommément ou par indication de son poste peut, par mandat :	Suspension
	(a) suspend the parole or statutory release; (b) authorize the apprehension of the offender; and (c) authorize the recommitment of the offender to custody until the suspension is cancelled, the parole or statutory release is terminated or revoked or the sentence of the offender has expired according to law.	*a*) suspendre la libération conditionnelle oud'office; *b*) autoriser l'arrestation du délinquant; *c*) ordonner la réincarcération du délinquant jusqu'à ce que la suspension soit annulée ou que la libération soit révoquée ou qu'il y soit mis fin, ou encore jusqu'à l'expiration légale de la peine.	
Transfer of offender	(2) A person designated under subsection (1) may, by warrant, order the transfer to a penitentiary of an offender who is recommitted to custody under subsection (1) or (1.2) or as a result of an additional sentence referred to in subsection (1.1) in a place other than a penitentiary.	(2) La personne désignée en vertu du paragraphe (1) peut, par mandat, ordonner le transfèrement du délinquant — réincarcéré aux termes des paragraphes (1) ou (1.2) ou à la suite de la condamnation à la peine supplémentaire mentionnée au paragraphe (1.1) — ailleurs que dans un pénitencier.	Transfèrement
Cancellation of suspension or referral	(3) Subject to subsection (3.1), the person who signs a warrant under subsection (1) or any other person designated under that subsection shall, immediately after the recommitment of the offender, review the offender's case and	(3.1), la personne qui a signé le mandat visé au paragraphe (1), ou toute autre personne désignée aux termes de ce paragraphe, doit, dès que le délinquant mentionné dans le mandat est réincarcéré, examiner son dossier	Examen de la Suspension

	et :
(*a*) where the offender is serving a sentence of less than two years, cancel the suspension or refer the case to the Board together with an assessment of the case, within fourteen days after the recommitment or such shorter period as the Board directs; or	a) dans le cas d'un délinquant qui purge une peine d'emprisonnement de moins de deux ans, dans les quatorze jours qui suivent si la Commission ne décide pas d'un délai plus court, annuler la suspension ou renvoyer le dossier devant la Commission, le renvoi étant accompagné d'une évaluation du cas;
(*b*) in any other case, within thirty days after the recommitment or such shorter period as the Board directs, cancel the suspension or refer the case to the Board together with an assessment of the case stating the conditions, if any, under which the offender could in that person's opinion reasonably be returned to parole or statutory release.	b) dans les autres cas, dans les trente jours qui suivent, si la Commission ne décide pas d'un délai plus court, annuler la suspension ou renvoyer le dossier devant la Commission, le renvoi étant accompagné d'une evaluation du cas et, s'il y a lieu, d'une liste des conditions qui, à son avis, permettraient au délinquant de bénéficier de nouveau de la libération conditionnelle ou d'office.

[60] A useful summary of the statutory scheme is found in *R. v. Graham*, 2011 ONCA 138 at para. 13 as follows:

> With respect to a suspension of parole, the statutory scheme works as follows. "A person designated by name or by position, by the Chairperson of the Board or by the Commissioner" may, by warrant, suspend the parole, authorize the apprehension of the offender, and authorize the recommitment of the offender until the suspension is cancelled, the parole is revoked or the sentence has expired: s. 135 (1). A parole officer supervisor is such a person: *Commissioner's Directive No. 718: Designation of Persons with Authority for Suspension Under s. 135 of the Corrections and Conditional Release Act*, s. 10, June 16, 2008 (available at http://www.csc-scc.gc.ca/text/plcy/cdshtm/718-cd-eng.shtml. Section 107(1) grants the NPG exclusive jurisdiction and absolute discretion to grant, terminate or revoke, parole, or to cancel a suspension, termination or revocation of parole. Where the offender is recommitted, the parole officer supervisor must forthwith review the offender's case and either cancel the suspension or refer the matter to the NPB for review within a tight statutorily defined time frame (within 14 days if the

> offender is serving a sentence of less than two years; within 30 days in any other case): s. 135(3). The NPB must then review the case ("the Board", for review purposes) and, within the 90-day period prescribed by the regulations, either cancel the suspension or terminate or revoke the parole: s. 135(4) and (5).

[61] Within this statutory scheme it is necessary to determine what the standard of care is, if any, of parole officers to suspend day parole.

Standard of Care

[62] When the liberty of an individual is at stake, even though on day parole, what is the standard of care of a parole officer in determining whether or not that parole should be suspended? Some guidance on this issue is found in the case of *Hill v. Hamilton-Wentworth Regional Police Services Board*, [2007] 3 S.C.R. 129, wherein the Supreme Court of Canada at para. 73 made the following observation:

> 73. I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. **Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness**. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made — circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results (*Klar*, at p. 359). Rather, it accepts that police officers, like other professionals, may make minor errors or errors in judgment which

> cause unfortunate results, without breaching the standard of care. The law distinguishes between unreasonable mistakes breaching the standard of care and mere "errors in judgment" which any reasonable professional might have made and therefore, which do not breach the standard of care. (See *Lapointe v. Hôpital Le Gardeur*, 1992 CanLII 119 (SCC), [1992] 1 S.C.R. 351; *Folland v. Reardon*, 2005 CanLII 1403 (ON CA), (2005), 74 O.R. (3d) 688 (C.A.); Klar, at p. 359.) [emphasis added]

[63] The *Hill* case further refines the duty and the proximity of harm analysis in this passage:

> The most basic factor upon which the proximity analysis fixes is whether there is a relationship between the alleged wrongdoer and the victim, usually described by the words "close and direct". This factor is not concerned with how intimate the plaintiff and the defendant were or with their physical proximity, so much as whether the actions of the alleged wrongdoer have a close or direct effect on the victim, such that the wrongdoer ought to have had the victim in mind as a person potentially harmed. [para. 29]

[64] Based on *Hill* there is a proximity in the relationship between the parole officers and Mr. Hermiz as it was known to the parole officers that their actions could result in harm to Mr. Hermiz. The parole officers did owe a duty of care to Mr. Hermiz. Analogizing the duty of care of police officers as described in *Hill*, to parole officers generally, the duty of care owed by the parole officers is one in which they exercise their discretion but "within the bounds of reasonableness".

[65] Did the parole officers act within the bounds of reasonableness in this case? On the totality of the evidence led at trial it is my view they did not. While there is no doubt they have a difficult job to do, the exercise of discretion should be based on some reliable evidence not hearsay and surmise. Here, the incident giving rise to the suspension of parole was based on an unsubstantiated allegation founded in hearsay which was not in any way corroborated.

[66] The parole officers were faced with a situation in which allegations of wrongdoing by Mr. Hermiz were made. No real attempt was made to determine the accuracy of the allegations and particularly no attempt was made to consider reviewing the log book at the home where Mr. Hermiz was residing or consulting with the staff regarding Mr. Hermiz's conduct. A review of the log book may have assisted in determining the veracity of Mr. Hermiz's denials of involvement. No steps were taken to obtain confirmation of Mr. Bolan's story until after the suspension was made.

[67] The parole officers had several options available to them. They could have had Mr. Hermiz confined to the home for a brief period while investigations were conducted. They also had an option under the *CCRA*, s. 135(3)(b), within 30 days to cancel the suspension as they did not obtain any concrete evidence of Mr. Hermiz's involvement in the incident with Mrs. Bolan.

[68] In considering the standard of care further it is useful to consider the purpose and operation of the *CCRA*. The purpose and principles behind the *CCRA* are set out in ss. 3 and 4 as follows:

	PURPOSE AND PRINCIPLES	OBJET ET PRINCIPLES	
Purpose of correctional system	**3.** The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by (*a*) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and (*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.	**3.** Le système correctionnel vise à contribuer au maintien d'une société juste, vivant en paix et en sécurité, d'une part, en assurant l'exécution des peines par des mesures de garde et de surveillance sécuritaires et humaines, et d'autre part, en aidant au moyen de programmes appropriés dans les pénitenciers ou dans la collectivité, à la réadaptation des délinquants et à leur réinsertion sociale à titre de citoyens respectueux des lois.	But du système correctionnel
Paramount consideration	**3.1** The protection of society is the paramount consideration for the Service in the corrections process. 2012, c. 1, s. 54.	**3.1** La protection de la société est le critère prépondérant appliqué par le Service dans le cadre du processus correctionnel. 2012, ch. 1, art. 54.	Critère prépondérant

Principles that guide Service

4. The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:

(*a*) the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process, the release policies of and comments from the National Parole Board and information obtained from victims, offenders and other components of the criminal justice system;

(*b*) the Service enhances its effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, offenders and the public;

(*c*) the Service uses measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act;

(*d*) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

(*e*) the Service facilitates the involvement of members of the public in matters relating to the operations of the Service;

(*f*) correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

Principes de Fonctionnement

4. Le Service est guidé, dans l'exécution du mandat visé à l'article 3, par les principes suivants:

a) l'exécution de la peine tient compte de toute information pertinente dont le Service dispose, notamment les motifs et recommandations donnés par le juge qui l'a prononcée, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine ou fournis par les victimes, les délinquants ou d'autres éléments du système de justice pénale, ainsi que les directives ou observations de la Commission nationale des libérations conditionnelles en ce qui touche la libération;

b) il accroît son efficacité et sa transparence par l'échange, au moment opportun, de renseignements utiles avec les victimes, les délinquants et les autres éléments du système de justice pénale ainsi que par la communication de ses directives d'orientation géné-rale et programmes correctionnels tant aux victimes et aux délinquants qu'au public;

c) il prend les mesures qui, compte tenu de la protection de la société, des agents et des délinquants, ne vont pas au-delà de ce qui est nécessaire et proportionnel aux objectifs de la présente loi;

d) le délinquant continue à jouir des droits reconnus à tout citoyen, sauf de ceux dont la suppression ou la restriction légitime est une conséquence nécessaire de la peine qui lui est infligée;

e) il facilite la participation du public aux questions relatives à ses activités;

f) ses décisions doivent être claires et équitables, les délinquants ayant accès à des mécanismes efficaces de règlement de griefs;

(*g*) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups;

g) ses directives d'orientation générale, programmes et pratiques respectent les différences ethniques, culturelles et linguistiques, ainsi qu'entre les sexes, et tiennent compte des besoins propres aux femmes, aux autochtones, aux personnes nécessitant des soins de santé mentale et à d'autres groupes;

(*h*) offenders are expected to obey penitentiary rules and conditions governing temporary absences, work release, parole, statutory release and long-term supervision and to actively participate in meeting the objectives of their correctional plans, including by participating in programs designed to promote their rehabilitation and reintegration; and

h) il est attendu que les délinquants observent les règlements pénitentiaires et les conditions d'octroi des permissions de sortir, des placements à l'extérieur, des libérations conditionnelles ou d'office et des ordonnances de surveillance de longue durée et participent activement à la réalisation des objectifs énoncés dans leur plan correctionnel, notamment les programmes favorisant leur réadaptation et leur réinsertion sociale;

(*i*) staff members are properly selected and trained and are given

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

1992, c. 20, s. 4; 1995, c. 42, s. 2(F); 2012, c. 1, s. 54.

i) il veille au bon recrutement et à la bonne formation de ses agents, leur offre de bonnes conditions de travail dans un milieu exempt de pratiques portant atteinte à la dignité humaine, un plan de carrière avec la possibilité de se perfectionner ainsi que l'occasion de participer à l'élaboration des directives d'orientation générale et programmes correctionnels.

1992, ch. 20, art. 4; 1995, ch. 42, art. 2(F); 2012, ch. 1, art. 54.

[69] Notably, and as strenuously argued by the Crown, the "protection of society is the paramount consideration". However, this requirement, which is clearly important, is modified and qualified by several other provisions of the *CCRA*. Those provisions include the principles in 4(d) that Correctional Service Canada (CSC) "use the least restrictive measures consistent with the protection of the public" and in (e) that offenders "retain the rights and privileges of all members of

society". Further, pursuant to s. 24 (1) the "Service **shall** take all reasonable steps to ensure that any information about an offender is as accurate, up to date and complete as possible" [emphasis added].

[70] There is some limitation on the effect of section 24. In *Tehrankari v. Canada (Correctional Service)* [T-1662-98, decision of Lemieux J. dated April 13, 2004] there is a discussion of the meaning of section 24 as follows:

> [41] The signal given by Parliament in section 24, in the form of a statutory duty imposed on the Service, is that the "information banks" reflected in various reports maintained about offenders should contain the best information possible: exact, correct information without relevant omissions and data not burdened by past stereotyping or archaisms related to the offender. In Parliament's view, the quality of the information prescribed by section 24 leads to better decisions about an offender's incarceration and, in this manner, leads to the achievement of the purposes of the Act. Section 24 of the Act, however, is not concerned with the inferences or assessments drawn by the Service from file information. Section 24 cannot be used to second guess decisions by the CSC provided the information base on which those conclusions are drawn comply with this provision. Section 24 deals with primary facts; this point will be expanded on later.
>
> . . .
>
> [50] There are two separate components to section 24 of the Act. First, the legal obligation in subsection (1) concerning the accuracy, completeness and currency of any information about an offender the Service uses and the reasonableness of the steps taken to ensure this is so. Second, the provisions in subsection (2) where an offender believes certain information contains an error or omission and requests a correction which is refused.
>
> [51] The purpose of subsection 24(1) seems clear. Parliament has said in plain words that reliance on erroneous and faulty information is contrary to proper prison administration, incarceration and rehabilitation. Counsel for the respondent focused on the limitation in the subsection "the information must be <u>used</u> by the Service. If the information is simply on file and not used it has no consequence, he argues. This proposition finds support in a recent decision by my colleague Reed J. in *Wright v. Canada (Attorney General)*, [1999]

> F.C.J. 1304. I note, however, the provision she was examining was not section 24 but section 26 dealing with disclosure to victims. This is not an access case and there can be no question here the information the applicant complains of is used by the Service; the Commissioner acknowledged so in his reasons at the third level grievance when he said "the information contained in the preventive security reports is still relevant for administrative decision-making..."

[71] In this case the information was obtained by the SIO, Ms. Goldthorp, in the course of her duties and used by her to advise Mr. Al-Baghdadi. On the basis of *Tehrankari* this is sufficient to invoke section 24.

[72] In addition to the statutory requirements of section 24, Mr. Hermiz argues that CSC has adopted principles of fairness in dealing with inmates and refers to a document prepared by CSC and found on its website entitled "The Duty to Act Fairly in Penitentiaries" which mandates that the principles of the Rule of Law apply to inmates as do the principles set out in s. 7 of the *Charter of Rights and Freedoms*. Section 7 guarantees that "everyone has the right to . . . liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[73] Thus, even though on day parole, Mr. Hermiz enjoyed certain rights including the right of freedom and had an expectation that he would not be deprived of that right without the Crown's representatives adhering to principles of fundamental justice and exercising their discretion reasonably.

[74] The Crown in their submissions argued that "[a]t minimum then parole officers are provided granted [sic] absolute discretion in making decision [sic] for the protection of society". In light of *Hill*, there is no absolute discretion but rather a discretion that is qualified by reasonableness. While advocating an absolute discretion, the Crown nonetheless conceded that any standard of care of parole officers "should be similar to that of an investigating officer". Thus, the question to be answered with respect to the causes of action is was the decision by the parole officers reasonable in all of the circumstances?

Misfeasance in Public Office

[75] The primary cause of action alleged by Mr. Hermiz from these facts is misfeasance in public office. This is an intentional tort. The elements of this tort which must be met are set out by the Supreme Court of Canada in *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263. Those factors can be summarized as follows:

a. the defendant is a public officer;

b. the impugned conduct involves the exercise of a power or duty associated with the public office;

c. the defendant acted with malice toward the plaintiff, or with knowledge that he or she was acting unlawfully and that the action would likely injure the plaintiff;

d. the defendant breached a duty to the plaintiff; and,

e. the plaintiff suffered damage as a result.

[76] Mr. Hermiz argues that all of these factors are met. The various actors on behalf of CSC are all public officers: Ms. Goldthorp, Mr. Al-Baghdadi and Mr. Schiller (collectively, the CSC Officers). They are public officers. Thus, the first factor is met.

[77] Did the conduct of the CSC Officers involve the exercise of a power associated with their public office? As noted in argument by counsel for Mr. Hermiz all three officers made decisions which negatively impacted Mr. Hermiz. In the course of their duties they were exercising a power associated with their respective positions within CSC. Ms. Goldthorp was investigating an incident involving contraband potentially coming into the institution and the stabbing of Mr. Bolan. She had a duty to ensure that information she collected and reported was accurate and reliable. Pursuant to s. 24 of the *CCRA* she was required to take all reasonable steps to ensure that all information regarding an inmate and by extension Mr. Hermiz was accurate and reliable. She only relied upon what Mr. Bolan told her without any further real inquiry to verify his story. When she reported the information to Mr. Al-Baghdadi she had to know that this information would be acted upon.

[78] In the circumstances, as argued by Mr. Hermiz, she could have taken additional reasonable steps to ensure the information was accurate. Such steps might have included:

a. Telephoning Mrs. Bolan to determine if her version of events matched those of Mr. Bolan;

b. Checking the telephone log to verify when Mr. Bolan spoke to his wife;

c. Checking whether the descriptions of the individuals alleged to have visited Mrs. Bolan matched Mr. Hermiz;

d. Checking inmates to determine if one had a wound consistent with Mr. Bolan's story. The evidence at trial did not identify any inmate with a wound as described by Mr. Bolan (see Tab 37 of Joint Book of Documents); or,

e. Checking inconsistencies in Mr. Bolan's story regarding the place and time of the stabbing.

[79] None of this was done and only Mr. Bolan's version of events was relayed to Mr. Al-Baghdadi who took action based solely on the information provided by Ms. Goldthorp. While he may have believed that the information was reliable it is clear there was nothing done to verify the information at the time a decision was made to suspend Mr. Hermiz's day parole.

[80] Because Mr. Al-Baghdadi acted only on the information from Ms. Goldthorp it cannot be said that he acted on all reasonable information. While he made a call to Mrs. Bolan to obtain her version of events he concluded without checking that she was recanting her story. As noted above, the information he obtained from her was very different from the story provided by Ms. Goldthorp.

[81] A post suspension interview was held with Mr. Hermiz at Maplehurst Correctional Centre where Mr. Hermiz was placed after his day parole was suspended. While Mr. Hermiz adamantly denied being involved with the incident involving Mr. Bolan and his wife, the parole officer did not accept Mr. Hermiz's version of events. Mr. Hermiz asked Mr. Al-Baghdadi to check the log book at the halfway house but Mr. Al-Baghdadi did not do so. It would have been reasonable for him to have at least taken this step.

[82] Mr. Schiller relied upon Mr. Al-Baghdadi's interpretation of events and information in suspending Mr. Hermiz's day parole.

[83] In all, this conduct of the Mr. Al-Baghdadi and Mr. Schiller also satisfies the second factor of misfeasance in public office.

[84] The third factor is more problematic. As noted above, on the evidence I have found that neither Mr. Al-Baghdadi nor Mr. Schiller acted with malice. They believed they were protecting the public and doing the job they are required to do. The fact that they did not take additional steps to corroborate Mr. Bolan's story does not amount to malice. However, the third factor also contemplates that a defendant acts against the interests of a plaintiff knowing that he or she was acting unlawfully.

[85] Iacobucci J. on behalf of the Supreme Court in *Odhavji* had this to say about this factor:

> 23 . . . the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in a public office from the other is the manner in which the plaintiff proves each ingredient of the tort. In Category B, the plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff.
>
> . . .

26 . . . misfeasance in a public office is not directed at a public officer who inadvertently or negligently fails adequately to discharge the obligations of his or her office: see Three Rivers, at p. 1273 *per* Lord [page 284] Millett [full citation: *Three Rivers District Council v. Bank of England (No. 3)*, [2000] 2 W.L.R. 1220]. Nor is the tort directed at a public officer who fails adequately to discharge the obligations of the office as a consequence of budgetary constraints or other factors beyond his or her control. A public officer who cannot adequately discharge his or her duties because of budgetary constraints has not deliberately disregarded his or her official duties. The tort is not directed at a public officer who is unable to discharge his or her obligations because of factors beyond his or her control but, rather, at a public officer who could have discharged his or her public obligations, yet wilfully chose to do otherwise.

. . .

28 As a matter of policy, I do not believe that it is necessary to place any further restrictions on the ambit of the tort. The requirement that the defendant must have been aware that his or her conduct was unlawful reflects the well-established principle that misfeasance in a public office requires an element of "bad faith" or "dishonesty". In a democracy, public officers must retain the authority to make decisions that, where appropriate, are adverse to the interests of certain citizens. Knowledge of harm is thus an insufficient basis on which to conclude that the defendant has acted in bad faith or dishonestly. A public officer may in good faith make a decision that she or he knows to be adverse to interests of certain members of the public. In order for the conduct to fall within the scope of the tort, the officer must deliberately engage in conduct that he or she knows to be inconsistent with the obligations of the office.

29. The requirement that the defendant must have been aware that his or her unlawful conduct would harm the plaintiff further restricts the ambit of the tort. Liability does not attach to each officer who blatantly disregards his or her official duty, but only to a public officer who, in addition, demonstrates a conscious disregard for the interests of those who will be affected by the misconduct in question. This requirement establishes the required nexus between the parties. Unlawful conduct in the exercise of public functions is a public wrong, but absent some awareness of harm there is no basis on which to conclude that the defendant has breached an obligation that she or he owes to the plaintiff, as an individual. And absent the breach of an obligation that the defendant owes to the plaintiff, there can be no liability in tort.

> 30. In sum, I believe that the underlying purpose of the tort is to protect each citizen's reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and unlawful conduct in the exercise of public functions. . . .

[86] The conduct of the CSC Officers does not meet the malice part of the test. However, does it meet the Category B test as described in the excerpt from *Odhavji*? Mr. Hermiz argues that the conduct of the CSC Officers was such that it falls within the Category B description. That is, the CSC Officers knew they were causing harm and were wilfully blind to their obligations under s. 24 to take all reasonable steps to ensure the information on which they were acting was "accurate, up to date and complete as possible." Clearly, they did not take all steps necessary to ensure the accuracy of the allegations against Mr. Hermiz and were in possession of diverging stories regarding what happened. While they owed a duty to Mr. Hermiz they were also governed by a duty to protect the public.

[87] Mr. Hermiz refers to several cases which are argued to stand for the proposition that conduct similar to that in this case meets the requisite factors of misfeasance by public officers. In *Alberta (Minister of Public Works, Supply and Services) v. Nilsson*, [1999] A.J. 645 (Q.B.) the following description of the tort of abuse of public office is given:

> [107]. As previously stated, the tort of abuse of public office in Canada is firmly rooted in the targeted malice line of cases, where intent to harm forms the basis for the tort without any further mental element being required. An alternative basis for liability in the tort also exists. The majority decision in *Three Rivers, supra*, stands for the proposition that in addition to targeted malice, liability for misfeasance in public office is established where there is knowledge or recklessness regarding both the authority to act and the harm that is known (or foreseen) to result from the illegal actions. This proposition maintains a clear and fundamental distinction between negligence on the part of public officials and abuses of power, while allowing the tort to sanction behaviour that

> may not be as blatantly wrong as targeted malice, but is an abuse of power nonetheless. **Such abuses may occur when zealous civil servants over-step their authority for what they believe is the best interests of the public without due regard for individuals consequently harmed,** or when executive decisions are made which bend the rule and injure a few to avoid politically undesirable consequences. Whatever the facts may be, *Three Rivers, supra,* broadens the scope of the tort beyond the "targeted malice" cases while maintaining the element of deliberate misconduct as the underlying substance of the tort.
>
> [108]. Based on the foregoing, the appropriate test for abuse of public office in Canada can be stated as follows:
>
> > Has there been deliberate misconduct on the part of a public official? Deliberate misconduct is established by proving:
> >
> > 1. an intentional illegal act, which is either:
> > (i) an intentional use of statutory authority for an improper purpose; or
> > (ii) actual knowledge that the act (or omission) is beyond statutory authority; or
> > (iii) reckless indifference, or willful blindness to the lack of statutory authority for the act;
> >
> > 2. intent to harm an individual or a class of individuals, which is satisfied by either:
> > (i) an actual intention to harm; or
> > (ii) actual knowledge that harm will result; or
> > (iii) reckless indifference or willful blindness to the harm that can be foreseen to result.
> > [emphasis added]

[88] Based on the evidence I am of the view that the CSC Officers were overzealous in their response to Mr. Bolan's story which resulted in causing harm to Mr. Hermiz. The officers could and should have taken additional steps as noted above to confirm the veracity of the allegations against Mr. Hermiz. However, they did not have an actual intention to harm Mr. Hermiz but knew such harm would be the result of their decision. They were not, on the basis of my assessment of their demeanour and evidence, recklessly indifferent or wilfully blind to Mr. Hermiz's

circumstances. They had an honest belief that they were acting in the best interests of society and the protection of the public.

[89] The Crown argues that there was no misfeasance by the CSC Officers. For the reasons set out I agree with this position. Thus, the remaining factors of misfeasance in public office need not be considered.

False Imprisonment

[90] An alternative cause of action claimed by Mr. Hermiz is the intentional tort of false imprisonment. Mr. Hermiz argues that by improperly suspending his day parole he was falsely imprisoned. This intentional tort has three basic elements: 1) the restriction of a person's movement; 2) the restriction must be against the person's will; and, 3) the imprisonment must be intentional by the defendant. This is also a tort in which the onus shifts. That is, once a plaintiff has proved the restriction of movement, that it was against her will and was intentional, the onus shifts to the defendant to justify his actions [see, for example, *Kovacs v. Ontario Jockey Club*, (1995), 126 D.L.R. (4th) 576 (Ont. G.D.), and *Ernst v. Quinonez*, [2003] O.J. No. 3781].

[91] A description of the tort from *Halsbury's* is found in *Frey v. Fedoruk*, [1950] S.C.R. 517 as follows:

> The gist of the action of false imprisonment is the mere imprisonment; the plaintiff need not prove that the imprisonment was unlawful or malicious, but establishes a prima facie case if he proves he was imprisoned by the defendant; the onus then lies on the defendant of proving a justification.
>
> [*Halsbury's Laws of England*, 2nd Ed. Vol. 33, p. 38]

[92] In the circumstances of this case Mr. Hermiz's movements were clearly restricted by virtue of the suspension of his day parole. Further, the restriction was against his will as he proclaimed his innocence of any involvement in the Bolan incident. Indeed, the Crown concedes that the suspending of day parole "diminished the liberty" of Mr. Hermiz. The imprisonment was also intentional. However, the Crown argues that the diminished liberty was in accordance with law and policy and resulted from the proper exercise of discretion by the parole officers.

[93] Again, the issue devolves to a consideration of the parole officers' intention and whether there was justification in law for suspending the day parole. Does overzealous action in an honest belief that they are protecting the public amount to the justification necessary to satisfy the false imprisonment? On my view of the evidence it does not. While the parole officers believed they were acting in the best interests of the public, in light of their failure to better investigate the incident such as checking the log book or take lesser restrictive measures while a more complete investigation was completed, does not satisfy the onus.

[94] Thus, Mr. Hermiz is entitled to damages for false imprisonment. Damages are discussed below.

Negligence

[95] The third cause of action claimed by Mr. Hermiz is negligence of investigation by the CSC Officers. Even if the false imprisonment analysis is wrong, in my view Mr. Hermiz is entitled to recover damages for negligence of investigation.

[96] The Crown in their written submissions argue that the negligent acts relates only to the investigations conducted by the SIO and the parole officers and the decisions resulting from those investigations. As noted, the *Hill* case provides guidance on the duty owed by police officers which can be equally analogized to the CSC Officers. In *Hill* the Supreme Court noted: "Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness" [para. 73].

[97] The Crown relied upon *Turner v. Halifax (Regional Municipality)*, 2009 NSCA 106 for essentially the proposition that Courts should be wary of finding negligence against parole officers exercising their discretion for the protection of society when they are faced with incomplete and contradictory information. *Turner* involved a motion for summary judgment which resulted in the dismissal of a claim for negligent supervision of his parole. Briefly, the police were investigating three incidents of women being assaulted. Apparently the assaults occurred when a man suggested to the women that they needed car repairs. The police sought a suspect who had mechanical skills. A parole officer mentioned to the police that Mr. Turner had offered to repair a car but had not done the work. The police arrested Mr. Turner and charged with the assaults. The story was inaccurate and Mr. Turner was exonerated and the charges withdrawn. His parole was reinstated. The only claim was that CSC had "negligently supervised his parole suspension".

[98] The chambers judge determined that the claim had no realistic chance of success and dismissed the claim. The chambers judge ruled that there was no duty of care owed to Mr. Turner and relied upon the well-known case of *Anns v. Merton London Borough Council*, [1978] A.C. 728. Alternatively, he found that even if there was a duty of care there was no factual basis that the duty

had been breached by CSC resulting in harm to Mr. Turner. The Nova Scotia Court of Appeal dismissed the appeal on the basis of the alternative reason of the chambers judge that any duty of care was not breached. The reasoning of both Courts was that CSC did exactly what it was required to do in light of the statutory obligations of CSC. The parole was suspended only after the charges were laid and CSC conducted an inquiry into the circumstances and determined the information about Mr. Turner to be inaccurate. CSC then met with the prosecutors to report their findings as a result of which the parole was immediately reinstated. Those facts and findings are different than this case as CSC in that case conducted an investigation to determine the veracity of the information about Mr. Turner. The suspension of parole was not the result of a decision by the parole officer but as a result of charges laid by the police. Here, at best a cursory investigation took place but no real steps were taken to determine Mr. Hermiz's involvement in the incident described by Mr. Bolan.

[99] Thus, the question is whether the CSC Officers exercised their discretion reasonably in all of the circumstances. As stated above, in my assessment of the evidence and the demeanour of the witnesses they were overzealous in their response to the uncorroborated story of Mr. Bolan and failed to take reasonable steps to inquire into and determine whether Mr. Hermiz was involved in the incident. There was no evidence that Mr. Hermiz had visited Mrs. Bolan and indeed the evidence appeared to exonerate Mr. Hermiz if the visit had occurred three months prior to Mr. Bolan being stabbed.

[100] It is to be noted that the PBC had released Mr. Hermiz on day parole after a thorough review and a determination that Mr. Hermiz was a manageable risk. There is also much evidence in the notes and records as quoted above from both Fenbrook and from Mr. Al-Baghdadi which suggest Mr. Hermiz was not a risk.

[101] It is the duty of the PBC to review and determine whether an inmate has been sufficiently rehabilitated to be allowed on day parole. The PBC did this and determined that Mr. Hermiz was a manageable risk. The PBC asked pointed questions of the parole officers and were not satisfied on the hearing removing the suspension of day parole that there were sufficient grounds to suspend the day parole in the first place. While the decision of the PBC is not binding in this case it is nonetheless of some persuasive value as Courts defer to specialized tribunals acting within their competence.

[102] The Crown spent some considerable time arguing that any decision of the PBC was not relevant and should be given little weight. However, this submission overlooks the obvious. The PBC found as follows:

> As a result the Board has decided that, in light of the absence of reliable and persuasive information regarding the allegations that led to your suspension, risk for re-offence has not become undue and risk remains manageable in the community. As such, the suspension of your day parole release is cancelled.

[103] The Crown argues that the decision of the PBC reinstating the day parole of Mr. Hermiz is not admissible and even if it were it should be given little or no weight. The Crown argues that the PBC decision does not prove any proposition for which it is advanced and particularly does not prove the requisite elements of any of the torts asserted by Mr. Hermiz. It is argued that it does not

deal with any findings about the conduct of the parole officers, the investigatory process or the reasonableness of the decision to suspend. However, a review of the records and notes in evidence indicates that the evidence upon which the parole officers acted was neither reliable not persuasive. I come to the same conclusion as the PBC based on the evidence before me.

[104] The Crown further argues that the parties to the PBC were different; additional evidence was considered; the "assessment of risk" is different is the concern of the PBC not the torts in issue; and, the discretion exercised by the PBC is different.

[105] However, this argument fails to consider that the PBC specifically sought information from the parole officers and asked pointed questions concerning the suspension. Mr. Al-Baghdadi did provide information to the PBC to review as part of their hearing.

[106] The evidence upon which the parole officers acted, as I have found, and as observed by the PBC, was neither reliable nor persuasive. Thus, as noted, the PBC decision is admissible and should be given some weight but is not finally determinative of the issues in this case.

[107] More could and should have been done before the precipitous act of suspending parole was taken. The parole officers were in a sufficiently proximate relationship to Mr. Hermiz. They failed to take steps which were easily available to them and therefore were negligent in the conduct of their duties. Malice is not required for this tort so the fact the parole officers believed they were acting to protect society does not answer their negligence. The various steps that could have been

taken are noted above. Suffice it to say the parole officers' conduct did not meet the standard of reasonableness when all of the evidence is considered.

Damages

[108] Finally, with respect to damages the evidence at trial was that Mr. Hermiz obtained gainful employment upon his subsequent release and he was earning $21.50 per hour. Mr. Hermiz was imprisoned for 83 days based on CSC's standard method of sentence calculation as any part of a day is considered to be a full day in custody. Based on a standard 8 hour day this would be $14,276 in gross pay. However, this calculation is conditional upon Mr. Hermiz obtaining the job in fact in the summer before his day parole was suspended. It is speculation as to whether or not he would have had the job if his day parole was not suspended.

[109] From the record it appears Mr. Hermiz was working at a job that was paying less than $21.50 but the evidence is unclear at what rate. In any event, the Court must consider an appropriate remedy for the false imprisonment or alternatively the finding of negligence. Mr. Hermiz is not entitled to double recovery for both causes of action and in any event they are alternative claims.

[110] A useful discussion of damages for false imprisonment is found in *McGregor on Damages* (17th Ed., Sweet & Maxwell, 2003) in which the author observes:

> The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, *i.e.* the loss of time considered primarily from a non-

> pecuniary viewpoint, and the injury to feelings, with any attendant loss of social status and injury to reputation. [page 1396]

[111] Counsel for Mr. Hermiz provided the Court with several cases in which damages for false imprisonment were awarded. Such damages may be for time spent in custody or mental suffering or humiliation. For example in *Klein v. Seiferling*, [1999] 10 W.W.R. 554, 179 Sask R. 161 (Q.B.), the Court summarized damages for false imprisonment as follows:

> 51. The nature and extent of damages arising upon a false imprisonment or malicious prosecution are well established. Where a false imprisonment is proven the plaintiff is entitled to recover damages for interruption of business, bodily and mental suffering, injury to reputation and dignity including the cost of obtaining release from a legal restraint of liberty. . . [citations omitted]

[112] In *Klein* each of the four plaintiffs were awarded general damages ranging from $25,000 to $50,000 for various claims including loss of liberty (approximately 15 days), confinement, mental anguish, humiliation, loss of reputation and stress plus an award for pecuniary damages for loss of income and legal fees for bail applications [paras. 73 – 78].

[113] In *Kalsi v. Greater Vancouver Associate Stores Ltd*., 2009 BCSC 287, $6,500 in "nominal damages" were awarded for the detention of the plaintiff for four hours as the result of an alleged shoplifting incident.

[114] In *Parsons v. Niagara (Regional Municipality) Police Services Board*, [2009] O.J. No. 2718, one of the plaintiffs, who was known to the police and suspected of involvement in gang activity and drug trafficking, was awarded $7,000 for being falsely arrested and imprisoned in crowded conditions for five days. He also received other substantial damages which included an

amount for lost income. Counsel for Mr. Hermiz argues that to the extent this latter award is a guide then the Court in *Parsons* made an award of $1,400 per day which, in this case, would result in an award of $116,200 for 83 days. However, that is too simplistic a conclusion. Damages must be considered in light of all of the circumstances.

[115] No damage case is directly on point as each case is driven by the facts. Thus, they only provide general guidance. In essence, such damages are discretionary although one may have reference to the circumstances of persons wrongfully imprisoned including loss of the opportunity to earn income in addition to loss of liberty.

[116] The Crown argues that if any liability is found against CSC that damages be assessed in accordance with the principles enunciated in *Lebar v. Canada (F.C.A.)*, [1988] F.C.J. No. 940. In that case an inmate who should have been released 43 days earlier than he was claimed damages for wrongful imprisonment. He was awarded $430 in general damages and $10,000 in exemplary damages. The Federal Court of Appeal declined to interfere with the trial judge's assessment of damages. The plaintiff should have been released on August 14, 1982 because of the outcome of a decision of the Supreme Court of Canada but was not released until September 22, 1982. The trial judge, Mr. Justice Francis Muldoon found that the plaintiff had been falsely imprisoned and made the following finding: "[t]he clear inference of that unexplained prodigious delay is negligence and wilful or wanton disregard of the plaintiff's right to liberty. This court so finds." The Court did not find malice.

[117] In considering the quantum of general damages, Muldoon J., in a colourful passage said the following:

> The above recitation indicates why the damages awarded in the cases cited for the plaintiff are greater than he can expect to recover here. Upon becoming *sui juris*, if one does not exercise that restraint which nourishes personal liberty but continually victimizes others my means of criminal depredations, one is responsible for the devaluation of one's own liberty. Such a person cannot reasonably require the people and government of Canada to pay him a princely price for the liberty which he himself has constantly under-valued and squandered. The plaintiff is a virtually life-long tax consumer who seeks to impose the price of his 43 days of loss of his cheap liberty on the taxpayers of Canada. Indeed, if all monetary values were counterpoised as sums, it is almost certain that the plaintiff would owe the people of Canada, whom he cheated and robbed, more for food and lodging, social burden and criminal misconduct that he could ever pay. In that regard, it may be wondered why the defendant did not assert a set-off herein.
>
> How, then, is the plaintiff to be compensated for his self-devalued, squandered liberty? His behavioural record and his subsequent misconduct indicate the probability that, left at large to his own devices on August 10, 1982, the plaintiff could well have incurred negative gain during the following 43 days. Yet, he would (but for how long?) have been able to draw the sweet air of liberty and, arguably, might have been able to find legitimate employment. That counts for something, but in the plaintiff's particular case, not much.

[118] In assessing the general damages at $430, Muldoon J. took into account that the plaintiff had been incarcerated for some 20 years and gave him the benefit of earning $10 per day while an inmate. He observed: "[t]he taxpayers of Canada cannot reasonably be expected to pay more than $10 per day in general damages for the liberty which Mr. Lebar himself has so apparently despised both before and after August 10, 1982". While providing some guidance, the facts in *Lebar* are significantly different from this case.

[119] General damages are essentially compensation for losses for pain and suffering and the like, while exemplary damages are intended to punish or deter [see *Rookes v. Barnard*, [1964] 1 All E. R. 367 at p. 407]. Exemplary damages of $10,000 were awarded in *Lebar* because of the Crown's "wilful and wanton disregard of the plaintiff's right to be released". Such does not apply here. As I have found, the CSC Officers were not acting with malice or wanton disregard for Mr. Hermiz's rights. While they were, in all of the circumstances, found to be negligent such does not warrant exemplary damages.

[120] In this case Mr. Hermiz was falsely imprisoned for 83 days. Based on the evidence there is no doubt he would have earned income as he sought and obtained gainful employment during his initial release and on his re-release almost immediately obtained employment at $21.50 per hour. He was also incarcerated for a substantial part of those 83 days at Kingston Penitentiary, a maximum security facility which houses inmates who would be at risk at other institutions because of the nature of their crimes. Loss of reputation and humiliation, however, are not matters that weigh heavily in assessing damages in this case. Thus, in my view, Mr. Hermiz is entitled to damages in the amount of $20,000. This amount takes into consideration that as a guide Mr. Hermiz would likely have earned a reasonable amount of income during this period in the range of $14,000. Further, considering the damage awards at large for false imprisonment as noted in *Klein*, *Kalsi* and *Parsons*, it is my view that $6,000 is an appropriate damage award.

[121] There was also a claim for damages for breach of the *Charter*. Notwithstanding the argument of Mr. Hermiz's counsel I am not persuaded that this case sufficiently engages a breach of *Charter* rights that warrants an award of damages.

Conclusion

[122] The Crown argued that if liability is found against the CSC Officers it would be against the "will of Parliament and invite future decisions which will endanger the public". This is a vast overstatement of the outcome of this case. There will be no floodgates opened as a result of this case. Cases of this sort are based on the specific facts and the evidence led at trial. The evidence in this case supports the conclusions reached. The will of Parliament, in fact, is respected as central to the obligations of the CSC Officers is the reasonableness standard enunciated in *Hill* and the statutory duty they have under s. 24 of the *CCRA*.

[123] In the end result there will be judgment in favour of Mr. Hermiz for general damages for $20,000 together with all accrued interest thereon. He is also entitled to his costs of this proceeding. Mr. Hermiz's counsel sought costs in the reasonable range of $15,000 - $20,000. However, the Crown did not make submissions on costs and no order fixing costs will be made at this time. In the event the parties are unable to agree upon costs, the parties may submit written representations limited to three double-spaced pages within 15 days of the date of this decision.

ORDER

THIS COURT ORDERS that:

1. The Plaintiff shall recover general damages from the Defendant in the amount of $20,000.00 plus interest.

2. The Plaintiff is entitled to his costs of this action.

3. In the event the parties are unable to agree upon the quantum of costs, they may provide the Court with written submissions limited to three double-spaced pages within 15 days of the date of this Order.

"Kevin R. Aalto"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-828-09
STYLE OF CAUSE:	IMAD HERMIZ v. HER MAJESTY THE QUEEN
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APPEARANCES:

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Mr. Shain Widdifield Ms. Laura Tausky	FOR THE DEFENDANT

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