IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *William v. Kelowna (City),* 2012 BCSC 421

Date: 20120323
Docket: 88644
Registry: Kelowna

Between:

Joan William

Plaintiff

And

The Attorney General of Canada, Her Majesty the Queen in Right of the Province of British Columbia, The Ministry of Public Safety and Solicitor General, The Ministry of Health Services, The City of Kelowna, its employees, servants and\or agents, Roger O'Reilly, and Interior Health Authority its employees, servants and\or agents

Defendants

Before: The Honourable Mr. Justice Rogers

Reasons for Judgment

Appearing as Advocate for the Plaintiff:	W. Redisky
Counsel for the Defendants, The City of Kelowna and R. O'Reilly:	D. McKnight S. Harcus
Place and Date of Trial:	Kelowna, B.C. March 7-9, 2012
Place and Date of Judgment:	Kelowna, B.C. March 23, 2012

Introduction

[1] A check of the plaintiff's criminal and police investigation record revealed certain items of information unsatisfactory to her prospective employer. The employer withdrew the offer it had made to the plaintiff. The plaintiff takes issue with some of the information in her record and says that it ought not to have been communicated to the employer. She alleges that the information clerk who processed the check of her record was negligent in the performance of his duty and that he defamed her by advising the employer of the content of her record.

The Facts

[2] In early June 2010, Ms. William applied for and received an offer of employment with the Interior Health Authority as a home care aide. The Authority's manager Ms. Murray made the offer. The offer was contingent upon Ms. William providing satisfactory references – which she did – and a criminal and police record check satisfactory to the Authority. The Interior Health Authority was required by statute to check Ms. William's record before it employed her as a home care aide. The purpose of the check was to ensure that the Authority employed only persons who were suitable to work with vulnerable individuals such as the elderly, the infirm and the disabled.

[3] On June 8 2010, Ms. William attended at the Kelowna detachment of the RCMP. There, she read and signed a consent to provide the result of a criminal and police record check to the Interior Health Authority. The consent form authorized the RCMP to disclose to the recipient, i.e.: Interior Health, four categories of information relating to Ms. William. The categories were:

1. Records of criminal convictions;

2. Records of outstanding warrants for arrest or probation orders;

3, Records of court appearances where charges were stayed or withdrawn; and

4. Records of any police investigation of the consenting person, or records of summary conviction charges where no fingerprints were taken.

In the area of the form dealing with the fourth category, the following words appear:

> Police information located on computer systems (e.g. Police Information Retrieval System (PIRS), CPIC, PROS, PRIME, LEIP) and information located through local police indices checks. This will include all information related to non convictions and all charges regardless of disposition.
>
> **RCMP: Make Persons Queries on PIRS, CPIC, PROS, PRIME and LEIP.**
>
> **In view of the general nature of this information, confirm with requester this is in fact information pertaining to him/her. Requesters MUST confirm information which pertains to them prior to disclosure. If a discrepancy exists, do not disclose this information.**

[4] The form provided for one of two responses: “none located” if the police systems contained no record of the consenting party’s involvement with or investigation by police, and “may or may not exist” if the systems revealed that at some point in the past the police had investigated or dealt with the consenting party.

[5] The defendant Mr. O’Reilly was employed by the City of Kelowna as an information clerk. He worked at the City’s RCMP detachment. One of Mr. O’Reilly’s duties was to process criminal record checks. On June 17, 2010 Mr. O’Reilly performed a check of Ms. William's criminal and police records.

[6] Of the four record checks that Mr. O’Reilly conducted concerning Ms. William, three were clear. The clear checks were for criminal convictions, outstanding warrants or probation orders, or court appearances for charges that were withdrawn or stayed. Mr. O’Reilly ticked the “none located” box for each of those three categories.

[7] The fourth check came up with a positive result. That fourth check concerned records of police investigations of Ms. William. It revealed that RCMP officers had made notes concerning an incident involving Ms. William that had happened at about 11 p.m. on March 17, 2009. According to those notes, that evening three police officers were dispatched to an apartment building on Casorso Road in Kelowna. They were responding to a complaint of a possible domestic dispute. The

police notes indicated that when the police arrived they found a female person standing outside of the apartment building. The person refused to identify herself to the police. She was semi-dressed, meaning that she was wearing a bikini top and was barefoot. This person was intoxicated. The officers determined that she had been in a verbal and physical dispute with a male person inside one of the building's apartments. The officers told the woman that they were going to take her to a woman's shelter. The officer's notes indicated that the intoxicated woman adamantly refused to go to a shelter, saying that if the police did take her there she would immediately leave and return to the apartment where the incident began. The officers gave the woman a choice: go to the shelter or be arrested for causing a disturbance. The notes indicate that the woman argued with the officers and that she told the female officer present that she wanted to fight with her. The notes indicated that the officers ended up arresting the woman, who they had by then identified as Joan William. They put her in handcuffs, from which she twice escaped, and the officers took her to the RCMP cells where she spent the night. The police notes indicated that Ms. William was released the next day without charges.

[8] In her evidence at trial, Ms. William admitted that she was the Joan William with whom the police dealt that night in March 2009. Ms. William admitted that the content of the police notes of the incident were accurate with one exception. According to Ms. William's testimony, that one exception is she never indicated a desire to fight with one of the police officers.

[9] I accept Mr. O'Reilly's testimony that his usual practice when he ran across a record of a police investigation similar to the one concerning Ms. William was to call the person who had consented to the record check. His purpose in making that call was to determine whether the consenting person was the same person about whom the police note had been made and whether the person agreed that the incident noted had occurred. If the consenting person agreed that he was the subject of the police investigation and that the incident giving rise to the police notes had happened, then Mr. O'Reilly's practice was to tick a "may or may not exist" area on the fourth category of the check form, thus indicating that that a police investigation

may or may not exist relating to the consenting party. If, after communicating with the consenting party Mr. O'Reilly was satisfied that the person was not the person involved in the incident described in the police investigation notes or that no such incident had happened, then he ticked the "none located" area on the record check, thus indicating a clear record for that fourth category. Then he would pass the record check on to the recipient.

[10] The RCMP rules regarding the operation and procedure for criminal record checks allowed Mr. O'Reilly no discretion to hold back disclosure to the recipient of any information pertaining to the consenting party. That is to say, the rules of procedure required Mr. O'Reilly to tick the "may or may not exist" box on the form even if the police record of an investigation was dated or pertained to a police investigation of a matter unrelated to the purpose for which the record check had been requested. The only discretion afforded to Mr. O'Reilly was to tick the "none located" box if he was satisfied that the person about whom the police made their notes was not the same person as had consented to the record check or he was satisfied that the incident described in the police records had simply not happened.

[11] In the present case, Mr. O'Reilly testified that he believed that he did contact Ms. William by telephone. He testified that he believed that he spoke to Ms. William, that he had asked her whether she was the person about whom the police had made their notes regarding the March 17, 2009 incident, and whether she was the person who had been arrested, taken to the detachment and kept in cells overnight. Mr. O'Reilly had no specific recollection of that conversation. He made no note of such a conversation in the electronic file that he opened regarding his check of Ms. William's record.

[12] Mr. O'Reilly testified that if he had spoken to Ms. William on the telephone and had Ms. William admitted in that conversation that the police notes were about her and that she said to him words to the effect of "I don't want Interior Health to hear about that incident" then he would have shredded Ms. William's consent form and would have provided no criminal record check to Interior Health. The parties

agree that in that event Interior Health would have withdrawn its offer to hire Ms. William.

[13] Mr. O'Reilly testified that if in their conversation Ms. William had admitted that she was the person the police had investigated that night, that she had been arrested and that she had been kept in cells overnight, but that she refuted the one police note that she wanted to fight with one of the officers, then, in that case, he would have checked the "may or may not exist" box on the record check and would have sent the check form on to Interior Health. In short: Mr. O'Reilly said that he would have sent the form to Interior Health indicating a positive record for police investigation of Ms. William notwithstanding the fact that Ms. William had challenged one aspect of that record. Mr. O'Reilly testified that he would have done so because Ms. William's challenge would have concerned only one small aspect of the incident, but that overall the incident had involved Ms. William and that Ms. William had admitted that the incident had happened largely as the police notes indicated.

[14] Ms. William adamantly denies that Mr. O'Reilly spoke to her on the telephone or otherwise before her criminal record check was released to Interior Health. This is an important point because when Ms. Murray at Interior Health received the check, she was alerted by the "may or may not exist" tick concerning police investigations. Ms. Murray took the form to her superior Ms. Winters. Ms. Winters telephoned Mr. O'Reilly to inquire into the details of the police investigation. Mr. O'Reilly told her about the investigation. Mr. O'Reilly testified that he read the content of the police investigation report concerning the March 17, 2009 to Ms. Winters. He recalled telling her that Ms. William had been found semi-dressed, intoxicated and outside of her apartment, that she refused to go to a shelter and had argued with the police officers. He said that he told Ms. Winters that the police arrested Ms. William and took her to cells where she was held overnight. He did not think that he told her that the police note recorded that Ms. William had wanted to fight with one of the officers.

[15] A year and a half after the event Ms. William's representative asked Ms. Winter for her recollection of what Mr. O'Reilly said to her in that telephone

conversation. Ms. Winters said that Mr. O'Reilly told her of the non-controversial aspects of the incident, but also that Ms. William had been in an altercation with the police and had struck an officer. At trial Ms. Winters agreed that that was her best recollection then, however she also said that Mr. O'Reilly may have only said that Ms. William had wanted to fight with an officer. Ms. Winters went on to testify that in her mind, wanting to fight, having an altercation and striking an officer are all interchangable one with the other.

[16] Ms. Winters testified that based on the totality of what she had heard from Mr. O'Reilly, she felt that Ms. William's behavior on March 17, 2009 demonstrated poor judgment and a lack of boundaries. Ms. Winters testified that because Ms. William was a mature woman who had the benefit of education and some work history, she could not excuse Ms. William's behavior on the grounds of immaturity or inexperience. Ms. Winters felt that Ms. William was not a suitable person to place in the homes of vulnerable individuals. She therefore withdrew the offer of employment to Ms. William.

[17] Ms. William learned from Ms. Murray that the job offer had been withdrawn because of her criminal record check. She was upset by this development. Ms. William arranged to meet with Mr. O'Reilly to discuss her situation. During that meeting she asked Mr. O'Reilly why he had not called her first before sending her record check to Interior Health. Mr. O'Reilly reacted with surprise, saying that he thought that he had talked to her before he sent the record off. Mr. O'Reilly encouraged Ms. William to speak again with Interior Health and invited her to ask the Interior Heath representative to telephone him again. Ms. William did not take any steps to remediate her situation and she never did work for Interior Health.

[18] In June 2010 Ms. William was already working as a home care aide. Her employer was Advocare Health Services. Her job at Advocare was substantially the same job as Interior Health had offered to her. Ms. William continued to work for Advocare after June 2010 and was still working for that company at trial. Ms. William adduced no evidence that the hours of work she would have had with Interior Health

were any different than the hours of work she actually had at Advocare. The Interior Health job would have paid about a dollar an hour more than the Advocare job. Although Ms. William is convinced that she would have enjoyed rapid advancement within the Interior Health structure, what she said about advancement was inadmissible as hearsay evidence. Ms. William adduced no admissible evidence concerning opportunities for advancement within the Interior Health system that might have been open to her.

[19] In her evidence at trial, Ms. William also asserted that word of the criminal record check circulated among other persons in the health care industry, thus diminishing her reputation. Ms. William maintained that she had heard from other sources that two persons who had given her good references before June 2010 did not answer their telephones on reference checks made after that date. Like Ms. William's testimony concerning missed opportunities for career advancement, all of this testimony was purest hearsay, is inadmissible and can be given no weight.

Plaintiff's Position

[20] Ms. William says that these words on the record check form gave rise to a duty of care owed by Mr. O'Reilly to her:

> **RCMP: Make Persons Queries on PIRS, CPIC, PROS, PRIME and LEIP.**
>
> **In view of the general nature of this information, confirm with requester this is in fact information pertaining to him/her. Requesters MUST confirm information which pertains to them prior to disclosure. If a discrepancy exists, do not disclose this information.**

[21] According to Ms. Williams, it was Mr. O'Reilly's duty to determine whether any discrepancy existed between the police records and her version of events before he released the record to Interior Health, and if any discrepancy existed to not reveal the existence of the notes to the recipient of the record check.

[22] Ms. William says that Mr. O'Reilly breached that duty of care when he failed to contact her before releasing her record check to Interior Health. Ms. William maintains that had Mr. O'Reilly performed his duty, she would have told him that she disputed the police assertion that she had wanted to fight an officer that night.

Taking that position would, according to Ms. William, have given rise to the kind of discrepancy contemplated by the above quoted warning on the consent form.

[23] Ms. William argues that in the face of that discrepancy, Mr. O'Reilly would have been obliged to not release the information contained in the police notes of their March 17, 2009 investigation. She says that his only option would have been to tick the "none located" area on the fourth category of the record check. Instead, he ticked the "may or may not exist" area, thus alerting Interior Health to the March 17 incident, and causing Interior Health to withdraw its offer of employment. Ms. William says that consequent to Mr. O'Reilly's breach of his duty of care she lost the opportunity to work for Interior Health.

[24] In addition, Ms. William maintains that Mr. O'Reilly defamed her. Ms. William particularized the alleged defamatory publication thus:

> On or about June 10 Ms. Ann Winters, Manager of Administrative services for Interior health phoned Mr. O'Reilly for clarification as to the police allegations alleged against Ms. William. Mr. O'Reilly stated to Ms. Winters (And here we quote from Ms. Winters written statement that she delivered to Ms. William through her Lawyer Joan Young of McMillan LLP, which she will be testifying to in the trial on March 5, 2012) "HE INDICATED THAT MS. WILLIAM HAD BEEN ENGAGED IN AN ALTERCATION WITH AN OFFICER AND HAD STRUCK THE OFFICER."
>
> (emphasis in the original)

[25] Ms. William says that the defamatory words diminished her reputation with Interior Health and that, among other losses arising from the defamatory publication, she lost an opportunity to work for Interior Health as a home care aide.

Defendants' Position

[26] The defendants argue that Mr. O'Reilly owed no duty of care to Ms. William, that if he did owe a duty of care he did not breach it, and if he did breach it Ms. William has not proven that she suffered damage or loss as a result of the breach. The defendants' position is bottomed by their argument that a single point of contention between the content of police notes and a consenting party's recollection of the events about which the notes were made is not sufficient to require non-

disclosure of the record. The defendants say that even if Mr. O'Reilly had been aware of Ms. William's dispute over her wanting to fight with an officer, he would nevertheless have been satisfied that she had been the subject of the investigation and would have been obliged to tick the "may or may not exist" area on the record check form.

[27] The defendants argue that Mr. O'Reilly did not publish to Ms. Winters the words that Ms. William described in her particulars of defamation. They say that even if he did, or if he said some other words that were defamatory, those words were protected by qualified privilege and no action in defamation can lie against them.

[28] Finally, Mr. O'Reilly relies upon s. 287 of the *Local Government Act*, R.S.B.C. 1996, c. 323 which says:

> **287** (1) In this section, "municipal public officer" means any of the following:
>
> …
>
> (l) an officer or employee of a municipality, regional district, improvement district, library board under the *Library Act*, a greater board referred to in paragraph (f), the trust council under the *Islands Trust Act* or the Okanagan Basin Water Board;
>
> …
>
> (2) No action for damages lies or may be instituted against a municipal public officer or former municipal public officer
>
> (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's power, or
>
> (b) for any alleged neglect or default in the performance or intended performance of that person's duty or exercise of that person's power.
>
> (3) Subsection (2) does not provide a defence if
>
> (a) the municipal public officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or
>
> (b) the cause of action is libel or slander.
>
> (4) Subsection (2) does not absolve any of the corporations or bodies referred to in subsection (1) (a) to (k) from vicarious liability arising out of a tort committed by any of the individuals referred to in subsection (1) for which the corporation or body would have been liable had this section not been in force.

[29] Mr. O'Reilly maintains that he is entitled to the protection of s. 297(1) because Ms. William has not shown that he was dishonest, grossly negligent, malicious or acted with willful misconduct.

Discussion

Negligence

[30] The three essential elements that Ms. William must establish in order to succeed in her negligence claim are:

1. Mr. O'Reilly owed a duty of care to her;

2. Mr. O'Reilly breached that duty of care; and

3. The breach caused Ms. William to suffer damages.

[31] A key point of contention between Ms. William and the defendants is whether Mr. O'Reilly had a duty to contact Ms. William before he released the check to Interior Health and whether he did contact her.

[32] In my view, Mr. O'Reilly had a duty to make that contact. The duty arose out of the general nature of the content of police investigations and the potential for confusion and harm should information relating to person A be mistaken for person B and then released to, for example, person B's potential employer.

[33] As to whether Mr. O'Reilly did contact Ms. William, I accept Mr. O'Reilly's evidence that he usually does get in touch with a consenting party when something comes up in police notes concerning them. I accept that when he has that conversation with the consenting party, he will describe the content of the note and he will ask whether the party recalls the incident and whether the party was involved in it.

[34] I find that if Mr. O'Reilly had contacted Ms. William about the police notes concerning the March 17, 2009 incident, from that point forward Ms. William would have been well aware of the content of those notes. She would then have had no

reason to meet with Mr. O'Reilly later. Yet the evidence is clear that the two did have a meeting after the record check had got into the hands of Interior Health. During that meeting, Ms. William asked Mr. O'Reilly what was amiss in her record. She would not have asked those questions if she had already known the answers to them. For that reason I find that Ms. William did not know what the record check had revealed about the March 17, 2009 incident and that she did not know it because Mr. O'Reilly did not contact her before he released the record check to Interior Health.

[35] It follows that I find that Mr. O'Reilly owed a duty of care to Ms. William and that he breached that duty by prematurely releasing the record to Interior Health.

[36] The next question posed by Ms. William's claim for negligence is whether the breach caused Ms. William to suffer a loss. This engages the "but for" test of causation, and the question here is whether but for Mr. O'Reilly's breach of his duty of care to Ms. William, Ms. William would have suffered a loss? Put another way, would Ms. William have avoided the loss she claims if Mr. O'Reilly had called her before releasing the record check?

[37] I accept the defendants' position that the reason a consenting party is contacted before the release of police investigation information is to ensure that the party is in fact the person about whom the record was made. The reason is not, as Ms. William would have it, to confirm that the party admits to the truth of every detail of the record. To accept Ms. William's position would have the effect of giving the consenting party a veto, based on the most minor of points of contention, on whether police investigation information is ever disclosed on a criminal record check. That would significantly erode purpose and utility of the record check.

[38] Ms. William's position on this issue is based upon her fundamental misunderstanding of what it means to consent to the release of police investigation records. Ms. William consented to release of information contained relating to police investigations of her conduct. It was not a release of only those things that the police investigated and which she cared to admit were true. It follows that so long as the

investigation record accurately identified Ms. William as the person the police dealt with on March 17, 2009 and the record generally described the circumstances of the investigation, then Ms. William must be taken to have consented to the release of that information to Interior Health.

[39] I find that had Mr. O'Reilly contacted Ms. William, he would have asked her if she was the person who had been investigated for being outside the apartment building on Casorso Street while intoxicated and semi-dressed, whether she was the person who had argued with the officers over going to a women's shelter and whether she was the person who, in the end, had been arrested and kept in cells overnight? Ms. William would have been obliged to admit that she was that person. Ms. William may have asserted that she did not want to fight with an officer that night, but that assertion would not have negated the general accuracy of the police notes. Had Mr. O'Reilly received that confirmation from Ms. William he would have been obliged to tick the "may or may not exist" area on the form and he would have been obliged to forward the record check to Interior Health.

[40] As to what would have happened when Interior Health received the record check, I accept Ms. Winters' evidence that she gained a negative impression of Ms. William from the overall tenor of the police investigation. I find that based on the record noting that Ms. William had been involved in an incident in which she was intoxicated and barefoot and semi-dressed outside of her apartment in March, of her being argumentative with the police and of having had to be arrested and put in cells overnight, Ms. Winters would have concluded that Ms. William was not a suitable candidate for employment at Interior Health. I find that the additional allegation that Ms. William had wanted to fight with an officer, or that she had been in an altercation with an officer, or that she had struck an officer, would not have marked the tipping point in Ms. Winters' estimation between maintaining or retracting the offer of employment. So, even if Ms. William had told Mr. O'Reilly that those latter allegations were untrue, and if Mr. O'Reilly had kept quiet about those allegations in his conversation with Ms. Winters, Ms. Winters would nevertheless have formed the

negative opinion of Ms. William that she did and she would nevertheless have withdrawn the job offer.

[41] In the result, I find that things would not have turned out differently for Ms. William if she and Mr. O'Reilly had spoken before he released the record check to Interior Health. Ms. William has therefore failed to meet the essential "but for" test of causation. I find that she would have suffered the loss she complains of even if Mr. O'Reilly had fulfilled his duty of care to her.

[42] Because Ms. William has failed to show that she suffered damage as a consequence of Mr. O'Reilly's breach of the duty of care that he owed to her, her claim in negligence cannot succeed.

Defamation

[43] The only information available to Mr. O'Reilly when he spoke to Ms. Winters was the information contained in the police notes concerning the March 17, 2009 incident. I accept Mr. O'Reilly's evidence that he read from those notes during his conversation with Ms. Winters. I find that he had no reason to depart from that information, to embellish it or alter it in any way, and I find that he did not do so. I accept Ms. Winters' evidence that the phrases "wanting to fight", "being in an altercation" and having "struck an officer" are all interchangeable in her mind. I also accept her evidence that she does not now recall exactly what it was that Mr. O'Reilly said to her in that conversation.

[44] During that conversation, Mr. O'Reilly told Ms. Winters what the police had noted about the March 17, 2009 incident. In addition to the details that Ms. William admits are true, Mr. O'Reilly also told Ms. Winters that the police had noted that Ms. William had wanted to fight with an officer. I reject Ms. William's assertion that he told Ms. Winters that Ms. William had had an altercation with an officer or that Ms. William had struck an officer. Ms. Winters later confabulated the phrase "wanted to fight" with "had an altercation" and "struck an officer" and for that reason a year and a half later she gave the statement she did to Ms. William's representative.

Ms. Winters' after the fact confusion over what Mr. O'Reilly told her cannot, of course, bottom Ms. William's defamation action.

[45] The only thing that Ms. William asserts was untrue in Mr. O'Reilly's conversation with Ms. Winters is the assertion in the notes that Ms. William had wanted to fight with an officer. The defendants have not shown that this assertion was true. These facts give rise to two issues: was the statement defamatory and if it was, was it was protected by the defence of qualified privilege?

[46] Given the context of the communication between Mr. O'Reilly and Ms. Winters, *vis*: an application for a job working with vulnerable individuals, an assertion that Ms. William had wanted to fight with a police officer would have a negative effect on plaintiff's reputation. The statement was, therefore, capable of being defamatory.

[47] The defendants rely on the defence of qualified privilege. Qualified privilege protects a defendant from liability for defamation if:

a) the defamatory publication is made on an occasion of qualified privilege;

b) the defendant, in making the publication was not actuated by malice; and

c) if the defamatory statement was germane and reasonably appropriate to the occasion.

[48] An occasion of qualified privilege occurs when the person making the statement had an interest or a duty to make the statement and the person receiving the statement had a corresponding interest or duty to receive it: *Hill v. Church of Scientology*, [1995] S.CJ. No. 64.

[49] In the present case, Mr. O'Reilly had a positive duty to provide to Interior Health details of the police investigation of Ms. William's behavior on March 17, 2009. That duty was prescribed by the RCMP operations manual concerning criminal and police record checks. The manual stipulates that in his capacity as an information clerk, Mr. O'Reilly had no discretion to edit or redact information

contained in police notes relating to the consenting party. That is to say: once he was satisfied that the police notes were accurate insofar as they described Ms. William and the general nature of the incident, it was not open to Mr. O'Reilly to single out one element of those notes and refuse to pass that element on to Interior Health. Mr. O'Reilly's job required him to convey to Interior Health all of the information in the notes. Further, given that Ms. William had applied for a job working with vulnerable persons, Mr. O'Reilly had a duty to not withhold from Interior Health any aspect of Ms. William's dealings with the police.

[50] Interior Health had a corresponding duty to receive the police record information from Mr. O'Reilly. That duty arose from the legislative requirement that persons who apply for jobs with Interior Health must supply a criminal record check, and it also arises by operation of the common sense proposition that Interior Health had an interest in ensuring that it sent only reliable trustworthy people to work with its vulnerable clients.

[51] I find that there was nothing in the evidence at trial to suggest that in saying what he did to Ms. Winters, Mr. O'Reilly was actuated by a desire to harm Ms. William or that he was motivated by some improper purpose. The evidence pointed only to Mr. O'Reilly doing his job in the normal course. Nothing about Ms. William's consent to a criminal and police record check differentiated it from the thousands of similar checks that Mr. O'Reilly has done in his career. I cannot find that his communication with Ms. Winters was born of malice or improper purpose.

[52] I find that the police note that Ms. William had wanted to fight with an officer that night was part and parcel of the entire record of the incident. It was germane to Interior Health's interest in properly vetting prospective employees, and it was germane to Mr. O'Reilly's duty to supply that vetting information to Interior Health. It was, in my view, reasonably appropriate (mandatory, in fact) for Mr. O'Reilly to have conveyed to Ms. Winters the police note that Ms. William had wanted to fight an officer that night.

[53] In the result, I find that the defence of qualified privilege applies in this case. That being so, Mr. O'Reilly cannot be held liable for defaming Ms. William.

[54] Given my conclusion that the plaintiff's claims in negligence and defamation cannot succeed, it is unnecessary for me to consider whether Mr. O'Reilly is entitled to the protection of s. 287(1) of the *Local Government Act*.

Conclusion

[55] Ms. William's claims must be dismissed.

Costs

[56] The defendants are entitled to a single bill of costs against the plaintiff to be assessed on Scale B of the Tariff.

"P.J. Rogers J."
The Honourable Mr. Justice Rogers