

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Cragg v. West Vancouver (District)***,
2007 BCCA 441

Date: 20070913
Docket: CA034297

Between:

George Philip Cragg

Respondent
(Plaintiff)

And

The District of West Vancouver

Appellant
(Defendant)

And

David Allan Tone

(Defendant)

Before: The Honourable Madam Justice Saunders
The Honourable Mr. Justice Low
The Honourable Mr. Justice Thackray

D. Gooderham and G. Pun

Counsel for the Appellant

G. Cowper, Q.C.

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia
22 May 2007

Place and Date of Judgment:

Vancouver, British Columbia
13 September 2007

Written Reasons by:

The Honourable Mr. Justice Low

Concurred in by:

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Thackray

VANCOUVER

SEP 13 2007

COURT OF APPEAL
REGISTRY

Reasons for Judgment of the Honourable Mr. Justice Low:

[1] On 19 August 2001, David Tone, the principal defendant in this action, smashed his way through the front door of the West Vancouver home of the plaintiff, George Cragg, and viciously attacked Mr. Cragg causing him serious personal injury. The property damage was so extensive that its repair cost more than \$6,000. In Provincial Court on 22 May 2003, Mr. Tone was convicted of assault causing bodily harm.

[2] Mr. Cragg sued Mr. Tone and The District of West Vancouver for damages. Although Mr. Tone filed a statement of defence and appeared in person at trial, his liability to Mr. Cragg was indefensible.

[3] The trial judge also found the municipality liable for Mr. Cragg's damages for failure by its police employees to respond in a timely way to a telephone call from Mr. Cragg prior to the assault. It was said that had the police responded as required by their duty at law they could have prevented the assault. The judge apportioned liability at 85% to Mr. Tone and 15% to the municipality. His reasons for judgment can be found at 2006 BCSC 1020.

[4] West Vancouver appeals the liability finding. It contends that the trial judge erred:

- (1) by imposing a standard of care on the West Vancouver police department that was too high;
- (2) by imposing on civilian employees of the appellant requirements for interpretation and judgment not supported by the evidence;

- (3) by making a contradictory finding of fact as to the risk of imminent confrontation by Mr. Tone of Mr. Cragg; and
- (4) by not considering whether Mr. Cragg was contributorily negligent in failing to advise the appellant's civilian employee of crucial facts.

[5] The first three grounds of appeal are inter-related and I will deal with them compendiously. Because I am of the view that this appeal should be allowed it is unnecessary to discuss the fourth ground of appeal.

[6] Under s. 26(2) of the **Police Act**, R.S.B.C. 1996, c. 367 the "duties and functions of a municipal police department" include the prevention of crime. That is the duty Mr. Cragg says the police department failed to discharge in its response to his telephone call to the department prior to the assault.

[7] The police department employees who dealt with Mr. Cragg's complaint were Kimberly Kuypers, the front-desk call taker, and Gabriella Kriese, the dispatcher. Both are civilian employees. It seems to be common ground between the parties that the general procedures for processing complaints was accurately set out by the trial judge in para. 122 of his reasons:

[122] Under cross-examination, Ms. Kriese or Ms. Kuypers, and in some cases both, adopted various aspects of the policies and procedures for call takers and dispatchers that have been put in place by either or both of the RCMP and the West Vancouver Police Department. Specifically, they agreed that:

- (1) It is important to accurately and concisely relay all information necessary for the protection of the public and the safety of police officers.
- (2) When violence or the potential for violence exists, more than one officer should be dispatched.

- (3) All information received by a dispatcher or call taker should be judged in its most serious interpretation.
- (4) All available details should be relayed to officers with minimal alteration, deletion or misinterpretation.
- (5) A call taker must be alert, listen carefully for details and be particularly attentive to details given in the first part of any call.
- (6) A call taker must attempt to avoid pitfalls in communication by making assumptions and drawing conclusions without all available information and making sloppy observations by not listening actively for details.
- (7) A call taker or dispatcher must not act without having all available information.
- (8) A call taker or dispatcher must take care not to underrate a call due to, among other failures, not obtaining sufficient information, misunderstanding the seriousness of a call, disbelief in the seriousness of a call or giving insufficient attention to a call.

[8] The appellant agrees that it was open to the trial judge to find the applicable standard of care based on this evidence. In the ensuing paragraph the trial judge added:

[123] Concerning the classification and dispatching of calls, Ms. Kuypers, Ms. Kriese, or both, also agreed that:

- (1) Complaints involving threats should generally be dispatched as Priority 2 calls unless there is a reason to dispatch at a higher priority level.
- (2) Complaints involving domestic disputes should be dispatched with a high level of urgency due to the potential for violence and risk of physical harm, and the officers dispatched should be provided with details of any previous police intervention and any details of any prior use of violence. Cases of domestic disputes with verbal threats and no ongoing assault can be dispatched as Priority 2

but if there is an assault in progress or the potential for the use of weapons, a higher level of response is needed.

[9] The appellant does not dispute the second of these findings but says that the first finding leaves open the question of whether the evidence supported the conclusion that Ms. Kuypers should have treated Mr. Cragg's complaint as being of a current threat such as to require a Priority 2 response.

[10] In para. 124 the trial judge correctly stated the position of the appellant that it met the standards "in dealing with Mr. Cragg and processing his complaints".

[11] We have not been given any cases precisely on point. Apart from the general statutory duty to prevent crime and the procedures used by police departments to react to telephone complaints or reports there does not appear to be any common law that governs directly. This appeal is about whether the evidence supports the conclusion of the trial judge that Ms. Kuypers was negligent in not causing a dispatch of police assistance to Mr. Cragg's home on a higher priority basis than she did.

[12] Mr. Tone was married to Joan Buchanan for some twenty years. They separated in the fall of 2000, almost a year before the assault. Thereafter, Ms. Buchanan and Mr. Cragg became romantically involved. Mr. Tone did not react well to this relationship and this led to erratic behaviour by him. The trial judge set out this part of the history at paras 16 to 41 of his reasons. I need not summarize this history but will make brief reference to it in order to explain the content of the transcript of the telephone call made by Mr. Cragg to the police shortly before the

assault. This appeal turns on the proper interpretation of that conversation in the context of the applicable law as to the civil duty owed by police departments and their employers to persons such as Mr. Cragg.

[13] Mr. Cragg called the police office using a non-emergency number provided to him by a police officer on an earlier date in connection with a report he had made about Mr. Tone's threatening conduct. He spoke with Ms. Kuypers. With some editing for privacy purposes, the trial judge reproduced a transcript of the recorded telephone conversation:

START TIME: 21:46:12

DIS: Good evening, West Vancouver Police.

GC: Hi, this is the non-emergency number is it?

DIS: Mm mmm (*affirmative*).

GC: Great. Um I've got a problem with this really irate orangutan guy that lives in West Van. I live in West Van as well...

DIS: Mm mmm (*affirmative*).

GC: ... and there's a bit of a file on him and he is gone nuts.

DIS: Where is he?

GC: Um he's at his house on Gisby.

DIS: What's his address?

GC: Um just one sec.

DIS: Sure.

GC: Joan. Just one sec sorry.

DIS: Mm mmm (*affirmative*).

GC: Joan, Joan. Hi. [can you hang on for a sec?]

DIS: Hi.

GC: It's [...] Gisby.

DIS: Okay. And what is he doing?

GC: Um he's called here. First of all he damaged my vehicle tonight.

DIS: Mm mmm (*affirmative*).

GC: Um he damaged um his ex-wife's vehicle earlier today. And he is ah irate and um, ah verbally abusive and everything. He wants, he wants to, me to come outside, out on the street. Ah I live in Gleneagles.

DIS: What's your address?

GC: I'm at [...] Gleneagles, um Gleneagles Place. And my name is George CRAGG. And um he wants, you know to have a big fight and you know all that and, and there's no way I'm ever going to do that but um what happened a year ago, his wife and he separated cause he's such a, an overbearing um angry, physically abusive...

DIS: Now where's this wife, ex-wife's vehicle?

GC: Ah it was at her, where she's living now at her mother's house in Caulfeild and I'm not sure the...

DIS: And it was damaged today?

GC: This morning yeah.

DIS: This morning. And she reported that to the police?

GC: No she reported it to ah ICBC.

DIS: Okay and are you reporting your damage to your vehicle to the police?

GC: Um yeah.

DIS: And is your vehicle there?

GC: It's here at my house right now.

DIS: What damage has been done to the vehicle?

GC: Ah he got a key to it and keyed the, the ah, the back tailgate.

DIS: And what's the licence plate on your vehicle?

GC: Um just one sec.

DIS: Sure. Where is he now, is he at home?

GC: He's at home and I'm at home.

DIS: Okay. And yours is Gleneagles Place?

GC: Yes. [...] Gleneagles.

DIS: And your name, your first name is George. CRAGG is your last name?

GC: Yes. C-R-A-G-G.

DIS: C-R-A-G-G.

GC: Yeah. Um yeah I'm just running out to my car.

DIS: Sure.

GC: A black JEEP and it's ... [deleted for privacy purposes]

DIS: Mm mmm (*affirmative*).

GC: ...966.

DIS: 966.

GC: Yeah.

DIS: Okay. And what time of day do you think that he has done this with the time frame that he did this to the vehicle?

GC: Um between when I park, I parked the, the vehicle at Thunderbird Bowling, or sorry, Thunderbird um Marina.

DIS: Mm mmm (*affirmative*).

GC: And, right near my house at two o'clock and I just picked it up at eight o'clock and ah we noticed it.

DIS: In there, when you got around about eight o'clock?

GC: Yeah.

DIS: Okay so the damage happened at Thunderbird Marina.

GC: Yes.

DIS: Okay and you're at [...] Gleneagles.

GC: Gleneagles Place.

DIS: And he lives at [...] Gisby?

GC: Yes.

DIS: What's his last name?

GC: Ah TONE, T-O-N-E

DIS: And his first name?

GC: David.

DIS: Do you know how old David is?

GC: Yeah he's forty-three or forty-four.

DIS: Forty-three or forty-four.

GC: Yeah. And he's got a bit of a history in West Vancouver.

DIS: Yeah we'll do a, we'll do a background check...

GC: Yeah, yeah.

DIS: ...and make sure we got all the information...

GC: Yeah.

DIS: ... before the officer goes to speak to him.

GC: Yeah.

DIS: First things first. I'm going to have the officer come out and speak with you regarding...

GC: Okay.

DIS: ... the history of this file.

GC: Great.

DIS: It's not just going to be a mischief to auto based on the history of the file. We'll get them to do some sort of an investigation there.

GC: Yeah, yeah.

DIS: And we'll have the officer out there shortly. Are you going to be home for the next little while?

GC: Oh yeah, yes all night.

DIS: Alright then.

GC: Thanks (*unintelligible*).

DIS: No problem. Thanks a lot.

GC: Great.

DIS: Actually can I get your call back number?

GC: Yeah. 9, 604...

DIS: Yeah.

GC: ... [deleted for privacy purposes]

DIS: Mm mmm (*affirmative*).

GC: ... [deleted for privacy purposes]

DIS: Okay great. Thanks so much.

GC: And, and there is a bit of a file on him between he and I but um I lodged a complaint of, he was threatening to kill me from Hawaii and so the officers came here and phoned him in Hawaii and he admitted he had done that so...

DIS: Okay.

GC: ... there is a file already. I don't know the file number but ah...

DIS: Okay.

GC: ... and prior to that a couple of years ago he beat the shit out of a guy in West Van. Just about killed him. And um...

DIS: Okay.
GC: ... the charges were dropped but I think you probably have some kind of something in the background on him, but he's...

DIS: Okay.
GC: ... six feet five and just a giant um angry man.

DIS: Okay. And you're not afraid that he's going to be showing up there anytime soon are you?
GC: Oh, I'll just lock the doors.

DIS: No, okay.
GC: Yeah.

DIS: No problem.
GC: Thanks.

DIS: Thanks so much.
GC: Bye.

DIS: Bye bye.

END TIME: 21:50:34

[14] The following is a summary of the information given to Ms. Kuypers by Mr.

Cragg during the conversation:

- (1) Cragg had a problem with David Tone whom he described as a large man who was irate and verbally abusive;
- (2) Tone had damaged his "ex-wife's vehicle ... this morning" and had damaged Cragg's vehicle at the Thunderbird Marina some time prior to 8:00 p.m.;
- (3) When Cragg telephoned the police office Tone was at his house on Gisby and Cragg was at his house on Gleaneagles Place;
- (4) On an unspecified date in the past Tone had telephoned from Hawaii and had threatened to kill Cragg, an event Tone later admitted to the police;
- (5) Tone had telephoned Cragg at a time not specified and wanted him to come outside to fight on the street, something Cragg would not do;

- (6) Joan Buchanan had made a report to I.C.B.C. about the damage to her vehicle and Cragg was now making a report to the police about the damage to his vehicle;
- (7) Cragg would be home all night (to await the arrival of a police officer);
- (8) Cragg would lock the doors to his house (in the event Tone showed up).

[15] Ms. Kuypers conveyed the following to Mr. Cragg:

- (1) An officer would be out to see Cragg concerning the history of the file.
- (2) The officer would do a background check before talking to Tone.
- (3) The investigation would not be just about "mischief to auto based on the history of the file".
- (4) An officer would be to Cragg's home "shortly" or "in the next little while".

[16] It is important to note that the Cragg and Tone residences are 13 kilometres apart and that it takes about 15 minutes to drive from one to the other.

[17] The reference by Mr. Cragg to threats from Hawaii by Mr. Tone is to an incident some five months earlier. While on holiday in Hawaii, Mr. Tone telephoned Mr. Cragg's number and hung up several times. A police officer traced these calls. He contacted Mr. Tone in Hawaii and obtained his agreement to desist. The next day, however, Ms. Buchanan retrieved a message left on her cellular telephone by Mr. Tone that (referring to Mr. Cragg) he was going "to slice him and dice him".

[18] During the hearing of the appeal we listened to the tape recording of the conversation between Mr. Cragg and Ms. Kuypers and noted that Mr. Cragg's

tone of voice was casual. He did not sound anxious or fearful, even when, near the end of the conversation, he responded to Ms. Kuypers' question about the possibility of Mr. Tone showing up "anytime soon".

[19] There was evidence about interaction among Mr. Cragg, Mr. Tone and Ms. Buchanan during the afternoon and evening of the assault. The trial judge reviewed this at paras. 42 to 65 of his reasons. The last two paragraphs set the stage for what subsequently happened:

[64] Mr. Cragg testified that Ms. Buchanan then told Mr. Cragg that Mr. Tone wanted to talk to him and passed the phone to Mr. Cragg. Mr. Cragg said that Mr. Tone started ranting and swearing at him and kept asking loudly for Mr. Cragg to have a fight with him. Mr. Cragg acknowledged that at the end of that call he swore at Mr. Tone and hung up on him. Mr. Tone testified that it was Mr. Cragg who was ranting and swearing at all times during the call and challenging him to a fight. I reject that evidence.

[65] After that second telephone call, Mr. Cragg telephoned the WVPD on the non-emergency telephone number he had been given by police when he had met them earlier to complain about Mr. Tone threatening him from Hawaii.

[20] Based on cellular telephone records, the trial judge found that while Mr. Cragg was talking to Ms. Kuypers there was a telephone conversation between Mr. Tone and Ms. Buchanan that lasted almost eleven minutes. Mr. Tone learned from Ms. Buchanan that Mr. Cragg had telephoned the police.

[21] Ms. Kuypers recorded in electronic form what she determined to be the essence of Mr. Cragg's complaint. This record reads: DAMAGE TO VEH PARKED AT THUNDERBIRD MARINA 5776 MARINE DR., DAMAGE: VEH KEYED ON BACK TAIL GATE – COM BELIEVES MALE KNOWN TO HIM HAS CAUSED THIS

DAMAGE – COM AND OTHER MALE HAVE PREVIOUS FILES INVOLVING WVPD
– COM AT RES NOW WVEH – REQ OFFICER ATTENDANCE.

[22] After receiving this report Ms. Kriese did not forward the call to an on-duty police officer for twenty minutes. The only patrol officer in the zone closest to the Cragg residence happened then to be on a sanctioned coffee break some distance away. So the call was directed to Cst. Strehlau who was then covering that zone as well as his own. The constable was in his car preparing a report of a serious motor vehicle accident he had attended. It appears that he planned to attend at the Cragg residence when that task was finished.

[23] Mr. Tone chose to make his own telephone call to the police. At 10:16 p.m. (according to cellular telephone records) or 10:14 p.m. (according to the police log) he made a 911 call that was forwarded to Ms. Kriese. He claimed that he needed “police support at Gleneagles Place” in connection with a domestic dispute. He gave his name and said he had a problem with George Cragg who was “accosting” him, although he had not been assaulted. He said he was then at Gleneagles Place meaning, presumably, at the Cragg residence, in his Mercedes convertible. He claimed that the dispute was over an “altercation and threats that [Cragg] has made to me”.

[24] Ms. Kriese asked Mr. Tone to stay in his vehicle and told him that an officer would be there to speak to him in “just a few moments”. Mr. Tone admitted in evidence that he had lied about where he was phoning from and that he was then on the highway on his way to Mr. Cragg’s home.

[25] During the assault, Ms. Buchanan telephoned 911. The recorded time was 10:20 p.m., about five minutes after the end of Mr. Tone's call to Ms. Kriese.

Although the trial judge did not make a specific finding of fact in this regard, it is apparent that Mr. Tone, after talking to Ms. Kriese, drove immediately to the Cragg residence where, with no announcement and little or no hesitation, he violently forced his way inside and viciously attacked Mr. Cragg.

[26] In the meantime, at 10:17 p.m., Ms. Kriese alertly contacted Cst. Strehlau who was then 9.3 kilometres (8 minutes driving time) from the Cragg residence and told him to hurry to the Cragg residence. The trial judge concluded that when Mr. Tone talked to Ms. Kriese "no member of the WVPD was in a position to attend at the Cragg residence in time to prevent an altercation" (para. 83). There can be no doubt that this was because of the unexpectedly abrupt and forceful way that Mr. Tone invaded the Cragg residence to carry out the assault.

[27] In concluding that Ms. Kuypers was negligent the trial judge said the following:

[134] After considering the totality of Ms. Kuypers' interaction with Mr. Cragg that evening and her assessment of his concerns, I have concluded that rather than approach the situation with an open mind as to potentially very serious consequences arising from the circumstances and Mr. Tone's past and present behaviour, she fixated on the call having been made on a non-emergency line and later upon concerns expressed by Mr. Cragg about the damage to his vehicle. Her fixation on the damage to the vehicle and pigeon-holing the complaint as such resulted in her failing to either fully listen to or appreciate the concerns raised by Mr. Cragg and also resulted in her failure to probe his concerns with an open mind to obtain a full appreciation of the situation.

[135] In result, Ms. Kuypers not only failed to fully appreciate or evaluate the risk of harm being reported, but actively deflected Mr. Cragg from his real concerns about Mr. Tone's threatening behaviour and words by continually re-directing Mr. Cragg to issues and details related to the damage to his vehicle. I also find that her concerns for obtaining details about the vehicle damage caused her to not listen carefully to Mr. Cragg's utterances generally or to his responses to her questions that did not focus upon the vehicle claim. Accordingly, when Mr. Cragg responded to the question "you are not afraid that he is going to be showing up there anytime soon are you?" by saying "Oh, I'll just lock the door" as a reactive rather than a considered response, Ms. Kuypers misinterpreted Mr. Cragg's words as being a positive assertion that Mr. Cragg did not fear Mr. Tone. While standing alone, that misinterpretation would not be particularly significant, in the totality of the circumstances, and her under-appreciation of the urgency of the threats made by Mr. Tone, the result was a dispatch message that dramatically and fundamentally distorted the tenor of Mr. Cragg's complaints and the need for immediate police response.

[136] Although counsel for The District emphasized that Ms. Kuypers thought that the matters being described by Mr. Cragg were historical and knew that Mr. Tone was not in the presence of the complainant so that she could reasonably consider that there was no imminent danger to Mr. Cragg and that therefore the totality of the call was reasonably classified as a routine call rather than as a Priority 2 threat complaint, I do not agree.

[137] I am satisfied that in dealing with Mr. Cragg and assessing the situation reported by him, Ms. Kuypers: failed to accurately and concisely relay all information necessary either for the protection of the public or the safety of responding police officers; failed to assess the potential for violence; failed to judge all information received by her in its most serious interpretation; failed to listen carefully to Mr. Cragg's concerns and in fact minimized those concerns and drew conclusions as to the seriousness of the situation without exploring obvious issues such as Mr. Cragg's relationship with Ms. Buchanan.

[138] In all of those circumstances, I find that Ms. Kuypers' performance of her duties as a call taker in handling the call from Mr. Cragg on August 19, 2001, fell significantly below the standard of care expected of her. I do not agree that her erroneous classification of a threat situation with obvious potential for violent harm to Mr. Cragg as a low priority "mischief to auto" complaint arose from mere errors in judgment or by reason of the fact that the call did not originate as a 911 call. In my opinion, Ms. Kuypers negligently underrated Mr. Cragg's call by prejudging its seriousness, failing to explore obvious concerns that did not support that prejudgment and generally giving

insufficient attention to the concerns raised by him. She then perpetuated those errors by transmitting the call for dispatch as a routine low priority mischief call with no hint of threat or violence either past or future.

[139] In addition, by telling Mr. Cragg that "It's not going to be a mischief to auto based on the history of the file" and "We'll have the officer out here shortly. Are you going to be home for the next little while?" she compounded the effect of her negligent assessment by assuring Mr. Cragg of relatively immediate police intervention and protection when she was, in fact, conveying a low priority dispatch message that was to opposite effect.

...

[141] Importantly also, the evidence establishes that had Mr. Cragg's call been recorded for dispatch by Ms. Kuypers as a call with threat of violence, it would have been immediately dispatched and the officer who vacated the zone closest to the Cragg residence could have been recalled from the coffee break that was only authorized 15 seconds before the end of Mr. Cragg's call. That officer would have had ample time to attend the Cragg residence before Mr. Tone attended.

...

[160] I find that as a consequence of the negligence of Ms. Kuypers in processing and classifying Mr. Cragg's call that night as a low priority "damage to automobile call", the WVPD immediately lost control of the situation involving Mr. Tone and Mr. Cragg. I find that the loss suffered by Mr. Cragg as a consequence of the minimization of his concerns in face of the very real danger posed by Mr. Tone's threats materially contributed to by the actions of the WVPD and was foreseeable.

[161] The WVPD had the time as well as the ability to make proper inquiries of Mr. Cragg to fully assess the situation faced by him. The WVPD also had the power and duty to respond appropriately to his concerns in a way that would have prevented Mr. Tone from attending at the Cragg residence without meaningful police intervention. While Ms. Kriese's decision not to warn Mr. Cragg can be excused by reason of her lack of knowledge of the totality of the situation, the WVPD itself cannot be so excused. Ms. Kuypers' actions and inactions as a first responder exacerbated an already dangerous situation by not providing Ms. Kriese with sufficient information to dispatch an officer to Mr. Cragg's home with sufficient priority and detail to protect the public peace and prevent crime when it was well within the ability of the WVPD to do so.

[162] I accordingly find that The District is liable to Mr. Cragg by reason of the negligence of the WVPD in failing to prevent the assault upon him by Mr. Tone.

[28] It is implicit in these passages that on the information received by Ms. Kuypers from Mr. Cragg it was reasonable for Ms. Kuypers to treat the complaint on a low priority basis that essentially involved a report of damage to a motor vehicle. It was only the absence of further enquiry by her that attracted the finding that she was negligent.

[29] In my opinion, the conclusion the trial judge reached that Ms. Kuypers was negligent in not making further enquiry of Mr. Cragg is at odds with earlier conclusions reached by the trial judge as follows:

[72] I have decided that I must look to the words used by each of Mr. Cragg and Ms. Kuypers as I discern them from my review of the conversation in an objective way, in the context of the entirety of the telephone call and informed by the tone of voice used by each participant.

[73] After doing so, I have concluded that Mr. Cragg was not fearful of an imminent confrontation at his home by Mr. Tone when he called the police. As he said on discovery, he did not believe that anyone would be driving that night and the tone and inflection of his voice in response to the question "you are not afraid that he is going to be showing up there anytime soon are you?" satisfies me that it was not something he had considered until the question was asked. I find that his response of "Oh, I'll just lock the door" was a reactive rather than a considered response.

[30] It is clear from these findings that Mr. Cragg did not expect Mr. Tone to arrive at his home that evening and, had there been further enquiry by Ms. Kuypers, that is what he would have told her. It follows that she was not negligent in the manner

found by the trial judge. There is no suggestion in the judgment or in the arguments before us that she was negligent in any other manner.

[31] I have set out in paras. 13 and 14 above the relevant detail as to what was conveyed by Mr. Cragg and Ms. Kuypers to each other during their conversation. Mr. Cragg did not express any concern about being attacked by Mr. Tone in his home. It is implicit in what he did say and how he explained it on examination for discovery that he did not expect Mr. Tone to arrive at his home that evening, or at any other time for that matter. He told Ms. Kuypers that Mr. Tone wanted to fight him. He did not say that Mr. Tone threatened to assault him. He also said that he was secure in his own home and that, in any event, his antagonist was some distance away. It is apparent from all of this that there was no known or foreseeable risk that Mr. Tone would force his way into the Cragg residence and attack him.

[32] Ms. Kuypers determined on the information provided to her by Mr. Cragg that there was no imminent danger to him. In my opinion, that was a reasonable exercise of judgment on her part in all the circumstances. She could not be expected to be correct in her judgment when it accorded with that of Mr. Cragg. The trial judge imposed on her a duty of care that required her judgment to be correct, not just reasonable.

[33] Mr. Cragg is an architect and no doubt a man of reasonable intelligence. He was told by Ms. Kuypers that the police response would be "in the next little while". She clearly informed him that there would not be an emergency response. Had he felt that his safety was at risk he surely would have sought an urgent response by a

police officer. His words and his tone during the conversation make it clear that he was content with the level of response proposed by Ms. Kuypers.

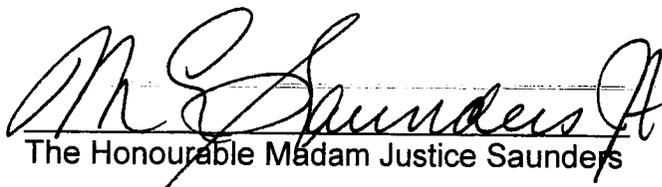
[34] In my opinion, the trial judge's conclusion that Ms. Kuypers was negligent in not making further enquiry was not supported by the evidence. There is no other basis for finding the municipality partially liable for the injuries sustained by Mr. Cragg.

[35] I would allow the appeal and dismiss the action as against The District of West Vancouver.



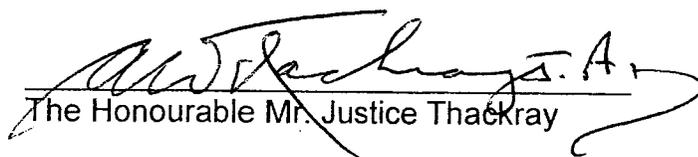
The Honourable Mr. Justice Low

I agree:



The Honourable Madam Justice Saunders

I agree:



The Honourable Mr. Justice Thackray