

No. 91871  
Victoria Registry

Victoria, B.C.  
September 3, 1993

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DAVID HUGHES

PLAINTIFF

AND:

ROBERT DIBDEN, CORPORATION OF  
THE TOWNSHIP OF ESQUIMALT,  
and HER MAJESTY THE QUEEN IN  
RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA

DEFENDANTS)

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE OWEN-FLOOD

Appearances:

D.M. ASHTON

for the Plaintiff

D.G. BUTCHER

for the Defendants

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THE COURT: (Oral) The plaintiff sues the individual defendant,  
Robert Dibden, a police constable, for assault. The  
plaintiff joins as defendants the individual defendant's  
employers, namely the Corporation of the Township of  
Esquimalt and Her Majesty the Queen in Right of the  
Province of British Columbia.

The background context in which this case arose is  
that the individual defendant (hereinafter referred to as  
"Dibden") was, in the early hours of the 16th January,  
1991, in the course of his duties operating a ghost car in  
the vicinity of Douglas Street and View Street in the City

1 of Victoria. At the intersection of Douglas Street and  
2 View Street by the McDonald's hamburger establishment he  
3 saw four young men of burly build in their late teens or  
4 early twenties boisterously cavorting along the street,  
5 with at least one of them at the time that Dibden was  
6 watching knocking over 250 pound concrete garbage cans on  
7 to the road. He observed the plaintiff do precisely that.

8 Dibden pulled up his police car basically at the curb  
9 but at a slight angle at the corner of View and Douglas by  
10 the McDonald's establishment. From his observations,  
11 Dibden formed the opinion that the four males had been  
12 drinking. Dibden, stepping out of the ghost car yelled:  
13 "Stop, police". The plaintiff took off upon Dibden's  
14 arriving at the scene. Dibden gave chase, shouting: "Don't  
15 make me chase you" or words to that effect.

16 The plaintiff ran across Douglas Street from  
17 McDonald's heading east on View Street pursued by Dibden.  
18 Dibden was gaining on the plaintiff. One or more of the  
19 other young men during the chase urged the plaintiff to  
20 make a run for it. Dibden, a man in excellent physical  
21 shape, was running at top speed. He started to gain on the  
22 plaintiff. The plaintiff, with a view to giving up,  
23 suddenly stopped with Dibden right behind him, causing  
24 Dibden to collide with him. They both fell to the ground  
25 with Dibden on top.

26 Up to that point in the narrative there is no  
27 significant dispute on the essentials between the various

1 witnesses. There are some details on which some of the  
2 witnesses are contradictory. The crux is what transpired  
3 after Dibden and the plaintiff had collided. As to that,  
4 there are basically two materially conflicting versions,  
5 that urged by the plaintiff versus that of the defendants.

6 The plaintiff in his version alleges that Dibden,  
7 having picked him up from the ground brought him over the  
8 hood of a car. There, grabbing him by the hand on the back  
9 of the head, he smashed Hughes' face deliberately on the  
10 hood of the car, causing significant injuries.

11 The defendant Dibden denies that. He specifically  
12 denies any intent to injure or harm the plaintiff in any  
13 way. Dibden says that in the course of making his arrest  
14 he pushed the plaintiff on to the hood of the car by  
15 letting him fall on to the hood of the car. Dibden claims  
16 that because of the manner in which he was holding him, the  
17 plaintiff was a dead weight. He could not support him with  
18 his arms extended. The defendant Dibden denies using any  
19 excessive force at all.

20 The burden of proof on a plaintiff is to establish the  
21 case on a balance of probabilities. In order to answer the  
22 question as to whether that burden has been discharged, it  
23 is necessary to review all of the evidence. This I have  
24 done because this case is one which is essentially driven  
25 by its facts and must fall to be decided on the credibility  
26 and reliability of the material witnesses.

27 The plaintiff testified that on the 15th of January,

1 1991 he worked at his job in a restaurant. He had dinner  
2 some time between 6:00 and 7:00 p.m. and came off work  
3 around 9:00 p.m. He went to the vicinity of the McDonald's  
4 in question, meeting there his friends Chad Naknakin, Blake  
5 Mackenzie and Michael Radcliffe. He testified that from  
6 there they went directly to a licensed premises called the  
7 Club Cal on Broad Street and Yates Street in Victoria.

8 I accept that part of his testimony but I also accept  
9 as true the testimony of Blake Mackenzie that after they  
10 met they went to a cold beer and wine store. There they  
11 purchased a case of beer which they drank in a public area  
12 behind the Dominion Hotel. They did that prior to going to  
13 the Club Cal. I note that the plaintiff made no mention in  
14 his narrative when he was asked what he had done that  
15 evening of purchasing and drinking the beer, but I find  
16 that that did in fact occur.

17 I do not accept the evidence of his other friend, Chad  
18 Naknakin, that prior to going to the Club Cal while they  
19 went to the cold beer and wine store they did not in fact  
20 buy any beer. I find that, as Blake Mackenzie swore, they  
21 went and indeed purchased and drank the beer. I mention  
22 that contradiction and I will mention other contradictions  
23 between the various witnesses because those contradictions  
24 have a bearing, I find, on the circumstances of this case  
25 and in particular on the amount of drink that was consumed  
26 and the reliability of the memories of the witnesses.

27 Hughes testified that at the Club Cal with his friends

1 he had to himself one pitcher of beer plus some seven to  
2 ten Paralyzers. I am satisfied from the evidence of other  
3 witnesses that a Paralyser is a drink which includes  
4 insofar as alcohol is concerned one ounce of vodka and half  
5 an ounce of Kahlua. He had that quantity to drink plus  
6 some beer from the case that was purchased at the cold beer  
7 and wine store between the hours of approximately 9:30 p.m.  
8 and 1:00 a.m. the following morning.

9 The plaintiff testified that his friend, the witness  
10 Chad Naknakin, was in the plaintiff's view not much of a  
11 drinker and did not have any Paralyser drinks at all. I  
12 accept what Naknakin himself said in his testimony to the  
13 contrary that he had in fact in the presence of the  
14 plaintiff some five or six Paralyzers to drink.

15 In any event, as Hughes testified and I accept it as  
16 true, he and his party went to the McDonald's in question  
17 where Michael Radcliffe, one of the party who I find was  
18 very drunk indeed, joined the plaintiff in pushing over on  
19 to the roadway the concrete garbage containers. I find  
20 that, as Chad Naknakin put it in his testimony, the  
21 plaintiff was pretty intoxicated. However, Radcliffe was  
22 even more intoxicated than the plaintiff. I accept what  
23 Naknakin opined, namely that he and Blake Mackenzie were  
24 less intoxicated than Radcliffe and the plaintiff but  
25 nevertheless were somewhat drunk.

26 I accept, as Hughes said, that he knocked over two or  
27 three garbage containers, and someone yelled "Cops". Then

1 a ghost car pulled up beside him. Someone said "Run" and  
2 he, Hughes, ran across Douglas Street going east on View  
3 Street. I accept that the police car stopped at McDonald's  
4 on View Street facing west.

5 Hughes testified that during the chase Constable  
6 Dibden yelled: "If you want to play games I can play games  
7 too." Constable Dibden denied that in his testimony.  
8 Dibden said that he yelled: "Stop, police" and during the  
9 chase said: "Don't make me chase you." That is the  
10 beginning in substance of the divergence between the two  
11 versions.

12 I accept that the plaintiff, as he deposed, since  
13 Dibden was catching up with him decided to slow down. He  
14 did that, stopping at a point that was near the concrete  
15 divider on View Street on the right hand side of the  
16 travelled portion. The plaintiff testified that as he  
17 slowed down he started to wave his arms. He thinks he  
18 might have said: "All right" or something to that effect.  
19 I accept that he did indeed indicate that he was going to  
20 stop and may well have said: "All right" or something  
21 similar.

22 I accept, as the plaintiff testified, that as he  
23 stopped he began to turn around towards his right and as he  
24 was doing that Dibden collided with him, coming into  
25 violent contact with the plaintiff's upper body. The  
26 plaintiff in his testimony said that he didn't know the  
27 physical mechanics of the collision. He was in collision

1 with either Dibden's fist, elbows or shoulders.

2 I am satisfied that the collision was accidental and  
3 unintentional. I am satisfied that, as the plaintiff says,  
4 he hit the ground with his face smashing on the tarmac with  
5 Constable Dibden initially ending up on top. I accept the  
6 plaintiff's testimony that in that accident his chin took  
7 the initial brunt of the fall and he suffered the loss of  
8 one tooth, the loosening of other teeth, lacerations and an  
9 injury to his nose. I note that the plaintiff asserts that  
10 the injury to his nose which resulted in the swelling and  
11 the black eyes he sustained came not from that initial  
12 accidental collision but from his face being, as he  
13 alleges, smashed subsequently by Constable Dibden on the  
14 hood of the car.

15 I accept, as the plaintiff said, that because of the  
16 severity of the impact of his face on the tarmac he was not  
17 unconscious but somewhat stunned initially for a short  
18 period of time. For that reason he did not stand up when  
19 requested by Dibden to do so. I further accept that  
20 initially the plaintiff did not deliberately go limp when  
21 Dibden picked him up. I accept, as the plaintiff  
22 testified, that Dibden picked him up by his jacket.

23 I accept Dibden's testimony that he picked him up by  
24 grabbing him by each of the shoulders of his jacket and, as  
25 the plaintiff put it, walking him over to a parked car.  
26 From this point on the testimony of the plaintiff  
27 materially differs from that of Dibden.

1 Hughes testified that Dibden smashed his face on to  
2 the hood of the car very rapidly, with the result that  
3 Hughes' nose hit the hood of the car. Hughes thinks he  
4 yelled out but is not sure. Hughes said that he thinks  
5 Dibden put his hand on the back of his, Hughes' head and  
6 struck his head down on the hood. Hughes said that he does  
7 not recall if Dibden was still holding him when his head  
8 hit the car.

9 After this incident, and I accept this as true, Hughes  
10 said he did not purposely resist being handcuffed with his  
11 hands behind his back but he could have subconsciously for  
12 a moment have resisted initially his hands being pulled  
13 behind his back. I accept, as Hughes deposed, that while  
14 this was going on his friends were yelling at Dibden:  
15 "Nazi", "Pig" and other epithets. I accept, as Hughes  
16 said, that this whole incident took one and a half to two  
17 minutes or so, a very brief period of time at any event.

18 The witness Blake Mackenzie testified. He said that  
19 after they drank the case of beer behind the Dominion  
20 Hotel, and I accept that as true, they went to the Club  
21 Cal. Blake Mackenzie swore, and I accept as true, that at  
22 the Club Cal between the period of 9:00 p.m. and 1:00 a.m.  
23 he personally had two beer and five special drinks, the  
24 special drinks being either some Paralyzers and/or some rum  
25 and Cokes.

26 He testified that, as Radcliffe and Hughes were  
27 kicking over the 250 pound garbage cans, Dibden arrived in



1 a ghost car. Hughes took off to evade arrest, Hughes went  
2 east on View Street where, according to Mackenzie's  
3 evidence, Hughes was halted by Dibden tackling him on the  
4 upper back. Mackenzie said that he saw Dibden's arm come  
5 up in a punching or grabbing movement.

6 I do not accept Mackenzie's testimony that Dibden  
7 tackled Hughes. That testimony is contrary to that of  
8 Dibden and indeed of the cab driver Blair Byrne. Neither  
9 is it unequivocally confirmed by Hughes' own testimony  
10 which was consistent with either a collision caused by a  
11 sudden stop or with his being tackled or struck by Dibden.

12 Mackenzie said that Hughes on being in collision with  
13 Dibden went down immediately on the roadway. Dibden picked  
14 up Hughes, taking him over to the parked car on the left  
15 side facing east on View Street. He slammed Hughes' head  
16 on to the hood of the parked car. According to Mackenzie,  
17 Hughes' head was brought down on the car with a bang which  
18 Mackenzie heard from a distance of some 20 to 30 feet away.  
19 He said that Dibden did this by grabbing the back of  
20 Hughes' neck and using a forward motion to smash Hughes'  
21 head down on the hood of the parked car.

22 That version as given by Mackenzie and Hughes is to be  
23 contrasted with that of Dibden. The versions of all the  
24 witnesses must be considered in the light of the context of  
25 the general situation at the scene. In that regard, I  
26 accept the testimony of the cab driver, Blair Byrne, who  
27 happened to be at the scene for part but not all of the

1 time. He was not there when the alleged assault involving  
2 the hood of the car took place. He had gone by then but he  
3 was there prior to that.

4 Byrne testified that on January 16th, 1991 at  
5 approximately 1:30 a.m. he was heading north on Douglas  
6 Street towards View Street. He saw four or five men  
7 kicking over some garbage cans on to the travelled portion  
8 of the street. He called his dispatcher asking him to call  
9 the police. He saw, he claims, a blue and white police  
10 ghost car coming around the corner. It stopped at Douglas  
11 and View. Byrne I find was mistaken as to the colour of  
12 the ghost car. I accept that it was in fact as Dibden and  
13 Naknakin said, grey in colour.

14 He saw one of the kickers of garbage cans, namely  
15 Hughes, run away with Dibden giving chase across Douglas  
16 Street up View Street east. He saw one of the group of men  
17 that he had seen earlier shouting encouragement to Hughes  
18 to keep on running, saying that the police would never  
19 catch up with him. He saw Dibden and Hughes hit the ground  
20 together after, as it seemed to Byrne, Hughes either  
21 tripped or Dibden and Hughes got entangled with each other.  
22 He saw Dibden fall on top of Hughes. He noticed that  
23 Hughes once on the ground offered no resistance. Within a  
24 minute or so or less both stood up.

25 He, Byrne, in light of the fact that it was one police  
26 officer with four men, some of whom had been kicking over  
27 garbage cans, felt the situation was such that in his view

1 the police officer needed further assistance. For that  
2 reason Byrne contacted his dispatcher seeking help. He  
3 said that when Hughes fell to the ground one of the men was  
4 yelling at Hughes to get up and make a further run for it.  
5 He said that the impact of Hughes striking the ground was  
6 such that it could have resulted, in Byrne's view, in  
7 injuries not just to the lip but also to the nose. He was  
8 concerned that the situation was dangerous and threatening  
9 because he had seen some of these people from that group  
10 destroying property by knocking over the garbage cans. I  
11 accept the evidence of Byrne as bearing upon the context in  
12 which Dibden found himself taking the actions that he did.

13 Dibden in his version testified that he chased Hughes  
14 across the intersection and up View Street. Hughes was on  
15 the north side of the pavement. He ran approximately a  
16 hundred metres. Dibden got to some four feet behind Hughes  
17 and leaned over to grab him. Hughes, suddenly starting to  
18 slow, turned slightly to his right. When the chase  
19 commenced Dibden had been 40 or 50 feet behind Hughes but  
20 now was only four feet or so. The result of Hughes'  
21 slowing suddenly was that Dibden ran directly into the back  
22 of Hughes who was turned slightly to his right. In the  
23 result Dibden's arms and upper body collided with Hughes'  
24 upper back and right shoulder, causing Hughes to crumple  
25 and fall. Dibden fell directly on top of Hughes but the  
26 force of the impact carried Dibden over Hughes and he ended  
27 up on the ground spreadeagled.

1           Dibden immediately got to his feet and Hughes remained  
2 motionless on the ground. Where they fell was the middle  
3 of the travelled portion of View Street. Because this was  
4 in the early morning and they were on the travelled portion  
5 of the roadway, Dibden grabbed Hughes by the back of his  
6 jacket saying: "Get up". Hughes made no response. Dibden  
7 grabbed Hughes' jacket in the shoulder blades area and  
8 pulled him up.

9           He carried Hughes over to the parked car on the side,  
10 a distance of some ten or fifteen feet, and pushed Hughes  
11 over the hood of the car, said Dibden. Hughes' arms and  
12 hands were in front of Hughes on the hood of the car.  
13 Dibden grabbed Hughes' right arm first and told him to put  
14 it across behind his back so that he could handcuff him.  
15 At first Hughes resisted. Dibden forced the right arm  
16 across to the small of Hughes' back. He told Hughes to put  
17 his left arm behind his back, and Hughes complied. Dibden  
18 handcuffed Hughes and, grabbing the back of Hughes' jacket  
19 in the neck area, pulled Hughes to his feet. Hughes then  
20 stood supporting his own weight. Dibden said that in  
21 pushing Hughes over the hood of the car he let Hughes fall  
22 over the hood of the car as Dibden could not, with his arms  
23 extended as they were, support Hughes' dead weight. Hughes  
24 was an inert mass at that point. Both of Dibden's hands  
25 were holding on to the jacket behind each of the shoulder  
26 blades of the back of Hughes. Dibden categorically denied  
27 that at any time he had his hand at the back of Hughes'

1 head prior to handcuffing him. Hughes' face, said Dibden,  
2 did come into contact with the hood.

3 Dibden when they walked back noticed for the first  
4 time Hughes' injuries. Dibden denied ever saying: "Do you  
5 want to play games? I can play games too." Dibden denied  
6 any intention of causing any injury whatever to Hughes.

7 Dibden, on pulling Hughes to his feet after he was  
8 handcuffed, told him he was under arrest for mischief and  
9 gave him the usual police warning, his Charter rights and  
10 his rights to counsel. Hughes made no response. As they  
11 neared the police car Dibden noticed blood from Hughes'  
12 mouth. He queried Hughes as to what was wrong with his  
13 mouth. Hughes said he had a loose tooth. In the police  
14 car Dibden asked Hughes to show him his mouth and Hughes  
15 told him to "fuck off".

16 Dibden says that Hughes was intoxicated. He appeared  
17 unsteady on his feet and had a strong smell of liquor on  
18 his breath. He noticed this as he walked Hughes to the  
19 police car.

20 Dibden says in the circumstances in which he found  
21 himself it would have been impossible for him to arrest  
22 Hughes with any lesser force. He said that he did ask  
23 Hughes not to run as in his experience as a police officer  
24 of some 12 years flight just increases the risk of danger.  
25 He said that when they both initially fell over that was  
26 purely accidental. He said the whole incident happened in  
27 a very short space of time. He denied the allegation in

1 that at one stage while walking Hughes back to the police  
2 car he had placed his right hand on his revolver holster  
3 which he was wearing and made a threatening reference to  
4 it. He said that could not have occurred, it did not  
5 occur, and it would have been impossible for it to have  
6 occurred because he was using both hands to hold Hughes.  
7 He specifically denied throwing Hughes down on to the hood.  
8 When Hughes hit the hood it was the result of Hughes' own  
9 body weight that caused him to go down, said Dibden.

10 The witness Chad Naknakin, a friend of the plaintiff,  
11 testified. He testified that he worked to 7:00 p.m. He  
12 went to McDonalds at 7:30 p.m. and had supper. There he  
13 bumped into his friends, Hughes and Blake Mackenzie. They  
14 went to the cold wine and beer store, but as Mike  
15 Radcliffe who was with them had no identification nothing  
16 was purchased. As I have said, I reject the contention  
17 that nothing was purchased.

18 Naknakin said they went to the Club Cal. He said that  
19 he at the Club Cal between 9:00 p.m. and 12:00 a.m. drank  
20 some five or six Paralysers. I accept that. He said that  
21 Hughes was pretty intoxicated and he was feeling  
22 intoxicated but not as intoxicated, he felt, as Hughes. I  
23 accept that. He said that Radcliffe was really  
24 intoxicated. I accept that. He said that the grey ghost  
25 car of the police arrived. He described the chase,  
26 testifying that Dibden and Hughes collided. They both fell  
27 down. I accept that. He said that Dibden grabbed Hughes

1 by the shoulders of his jacket and lifted him up while  
2 Hughes was motionless. Dibden walked Hughes over to the  
3 hood of the car. Dibden propelled Hughes on to the hood by  
4 quickly pushing him down. He said he heard a thump as  
5 Hughes hit the hood. He said that it would not be fair to  
6 describe Dibden as having placed Hughes on the hood of the  
7 car. He said it was a little more violent than that but by  
8 the same token it was not a smashing movement. He said  
9 that some of the others in their party were shouting  
10 epithets but not "Nazi" and "Pig" specifically.

11 Thus in the context of the situation as described by  
12 the car driver Byrne, the Court is faced in summary with  
13 two conflicting versions, that of Hughes and Mackenzie on  
14 the one hand to the effect that Hughes was smashed down  
15 having been grabbed by the back of the neck by Dibden. The  
16 other version is that of Dibden and Naknakin to the effect  
17 that Hughes was quickly pushed down but it was not a  
18 smashing movement. On the other hand it was more violent  
19 than placed. I bear in mind that Naknakin said smashing  
20 meant a movement with all one's strength. Nevertheless he  
21 testified that in his view it seemed in substance to be  
22 quickly pushed down, more than placed but not "smashing".

23 The burden of proof is on the plaintiff to establish  
24 his case on a balance of probabilities. I have to decide  
25 has that burden been met. Hughes was intoxicated on the  
26 evidence I find and so, but to a lesser extent, was Blake  
27 Mackenzie. Hughes was very drunk I find whereas Naknakin

1 and Mackenzie were merely drunk.

2 I note that the witness Byrne, the cab driver who had  
3 not been drinking, was mistaken in some of his testimony  
4 such as the colour of the ghost car. I note that Hughes,  
5 Mackenzie and Naknakin contradicted each other in various  
6 parts of their testimony. I notice that Hughes could not  
7 remember going to the cold beer and wine store, an incident  
8 that he did not recount in his narrative. I notice that  
9 Hughes could not recall whether the police officer was in  
10 uniform or not, yet he clearly was in uniform. Hughes  
11 thought that the ghost car was burgundy, yet it was clearly  
12 grey. Hughes does not remember Constable Dibden shouting:  
13 "Don't make me chase you" but he does not think it was  
14 said. Hughes does not recall Constable Dibden inquiring if  
15 Hughes was all right and his reply: "Fuck off".

16 I find that these contradictions and failures to  
17 recollect are in part occasioned by the amount of drink  
18 that was involved by the witnesses who had been consuming.  
19 On balance, I am satisfied that Naknakin has the better  
20 recollection. His evidence is to be preferred over that of  
21 Mackenzie and Hughes. I was not impressed with the  
22 evidence of the witness Mackenzie. I accept the evidence  
23 of Dibden.

24 In the result, I have concluded that the plaintiff has  
25 failed to discharge the burden of proving his case on a  
26 balance of probabilities. That being so, I dismiss his  
27 case with costs.



1 If I am in error in my findings on the allegation of  
2 assault, had I found that there was an assault, I would  
3 have assessed the non-pecuniary damages at \$1,000.00, and I  
4 would have awarded exemplary damages in the amount of  
5 \$7,500.00.

6 In making that decision I apply the findings of fact  
7 to the law as cited to me. I find that it has not been  
8 established that Constable Dibden used more force than was  
9 necessary. I specifically find that he did not, as  
10 alleged, grab Hughes by the back of the neck and smash his  
11 face down on the hood of the car. I find he did not smash  
12 his face down at all. I find that it happened as Constable  
13 Dibden said it happened.

14 Had I found the version given by Hughes and Mackenzie  
15 to have in fact taken place I would have found that  
16 Constable Dibden had used more force than was necessary and  
17 thus was in violation of s. 25 of the Criminal Code, but I  
18 am unable to so find. I am unable to conclude that it has  
19 been established that Constable Dibden used any excess of  
20 force.

21 Constable Dibden was exercising his duty having  
22 witnessed a breach of the peace of taking the person who  
23 had committed that breach of the peace into custody  
24 pursuant to s. 30 of the Criminal Code. I find it has not  
25 been established that Constable Dibden was guilty of any  
26 gross negligence or wilful misconduct. I have to consider  
27 what I have found he did in light of the circumstances

1 described. I find that what he did was a reasonable  
2 exercise of his duty.

3 I note that the British Columbia Court of Appeal held  
4 in R. v. Bottrell, (1960) C.C.C. (2d) 211 at 218:

5 In determining whether the amount of force used  
6 by the officer was necessary, the jury must have  
7 regard to the circumstances as they existed at  
8 the time the force was used. They should have  
been directed that the appellant could not be  
expected to measure the force used with  
exactitude.

9 I apply that law and, in the result, the plaintiff's case  
10 is dismissed with costs.

11 MR. BUTCHER: My Lord, there is one matter on costs. This  
12 action was brought on by a guardian ad litem.

13 THE COURT: We amended the style of cause at the beginning  
14 and substituted the plaintiff himself.

15 MR. BUTCHER: I'm aware of that, My Lord. It would be my  
16 submission that the guardian ad litem should be responsible  
17 for the costs until the plaintiff's nineteenth birthday. I  
18 think the nineteenth birthday would have been at some point  
19 in August 1992, in fact August 15th, 1992. The costs to be  
20 awarded against the guardian ad litem in my submission  
21 should be those costs associated with commencing the action  
22 and conducting the discoveries which were prior to the  
23 nineteenth birthday, and the costs of the plaintiff himself  
24 should be those of the trial.

25 THE COURT: What do you say to that, Mr. Ashton? It seems to  
26 me -- I am not deciding, but it seems to me your friend is  
27 correct.

1 MR. ASHTON: I don't have any authority to the contrary, My  
2 Lord. It does seem to make sense to me that the guardian  
3 ad litem is responsible for costs up to the nineteenth  
4 birthday.

5 THE COURT: Yes, so ordered.

6 MR. BUTCHER: And I would ask that they be at level three, My  
7 Lord.

8 MR. ASHTON: Yes, My Lord, it's the middle of the road.

9 THE COURT: Yes, level three.

10 (JUDGMENT CONCLUDED)

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13 POB

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