

Action No.: 2001-14278
E-File No.: CVQ20HARRISC
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

CHRISTOPHER HARRIS

Plaintiff

and

LTM CALGARY INC.

Defendant

PROCEEDINGS

Calgary, Alberta
November 24, 2020

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

2 _____
 3
 4 November 24, 2010 Afternoon Session
 5
 6 The Honourable Mr. Justice Neufeld Court of Queen's Bench of Alberta
 7
 8 R.J. Hawkes (remote appearance) For Christopher Harris
 9 S. Bernamoff (remote appearance) For Christopher Harris
 10 T. Layton (remote appearance) For LTM Calgary Inc.
 11 E. Walsh Court Clerk
 12 _____

13
 14 **Reasons for Judgment**

15
 16 THE COURT: Constable Christopher Harris is a member in
 17 good standing of the Calgary Police Service. Among his duties is apparently the training,
 18 perhaps occasional, perhaps more regular, of recruits.

19
 20 On July 30th, 2016, he had occasion to observe the arrest of Mr. Clayton Prince by three
 21 fellow Calgary Police Service officers. Constable Harris was not directly involved in that
 22 arrest. While observing the arrest, he was accompanied by a police recruit who was in
 23 training.

24
 25 The arrest of Mr. Prince resulted in the arrest of the three officers and a trial in which one
 26 of them was convicted of assault in association with the arrest, while the other two were
 27 acquitted.

28
 29 Approximately one week ago, Constable Harris became aware that he appears in what has
 30 been coined as a social justice film produced by the respondent, LTM Calgary Inc. The
 31 film is over 90 minutes in length; 29 seconds of it contain an audio that was taken from
 32 Constable Harris' body cam, as I understand it. It is not particularly clear due to the
 33 presence of street noise and other environment factors.

34
 35 In producing its film, LTM inserted what it has referred to as subtitles, could also be
 36 referred to as captioning, which allow the viewer of the film to better understand what is
 37 being said not only in respect of this exchange, but others, as I understand it. The
 38 captioning had Constable Harris stating to the recruit, in part, that what she just saw "did
 39 not happen". Constable Harris says that the captioning was, in that regard, inaccurate and
 40 that what he actually told the recruit was what you saw here "should not happen". He
 41 says that this is an important difference, because one could take from the phrase "did not

1 happen" an intent for them both to be participating in some form of coverup.

2
3 I think it is important to use the entire transcript excerpt at this point and, again, taken
4 from the captioning. According to his affidavit, Constable Harris says what was actually
5 said was as follows: (as read)

6
7 All right. Now, what you saw here should not happen.

8
9 And then the recruit says: (as read)

10
11 That's policy. Yeah, I know

12
13 Constable Harris says: (as read)

14
15 Guys decide to dispense some street justice.

16
17 Recruit says: (as read)

18
19 Yeah.

20
21 Constable Harris says: (as read)

22
23 If that guy in the white van was videotaping us, this would not do very
24 well, because buddy is surrendering. He gets down on the ground and
25 he gets fed a whole bunch of cheap shots

26
27 As I said, in the film the phrase "should not happen" was captioned as saying "did not
28 happen".

29
30 Constable Harris has commenced an action for defamation. He now seeks an interim
31 injunction requiring the filmmaker respondent to insert accurate captioning. He rejects
32 the respondent's offer made prior to this hearing and also during it to remove the
33 captioning all together so as to leave the viewer of the film to her or his own devices to
34 hear what was said, and to blur his image.

35
36 The respondent opposes the application. It maintains that this is not a case in which it is
37 clear that the words used in the audio are inaccurate, much less defamatory, and that the
38 applicant has failed to provide evidence of irreparable harm as is required in order to
39 obtain an interim injunction. It says that it intends to mount a defence to the action,
40 including denying that the captioning was inaccurate and that there is present here
41 defamation by innuendo if it was, indeed, inaccurate, among other things.

1 I agree with the respondent that with the changes now made to the film, injunctive relief
2 cannot be granted. Even if the wording used originally in the captioning was inaccurate,
3 which in my view it was, it cannot be said that defence are not nonetheless available to
4 the respondent moving forward.

5
6 Having listened to the CPS recording that was provided to the Court in the constable's
7 supplementary affidavit, it was clear to me that Constable Harris used the phrase "this
8 should not happen", as opposed to "this did not happen". Mr. Hawkes indicated that he
9 would like some determination from the Court to that effect in bringing this application
10 and I can say that based on the evidence currently before the Court, that certainly appears
11 to me to be the case. Nevertheless, it is open to question and is open to fair comment
12 what the constable meant by that phrase.

13
14 At trial, I am sure that this would be explored in more detail. Suffice it to say that it is
15 unclear to me whether the officer was concerned about the display of excessive violence
16 and the crime that was included within it potentially, or was concerned about the
17 possibility that the event could be exposed by someone in the notional white van that was
18 referred to in the exchange, for training purposes. I make no finding in that regard. I
19 simply mention that because while I would expect and would certainly hope that the
20 former is the case, that might be a live issue for determination at trial and is not one for
21 me to decide today.

22
23 I am also not satisfied that the applicant has met the test of showing that there would be
24 irreparable harm associated with having the film displayed in the manner in which LTM
25 now proposes to show it. They have removed what I consider to be inaccurate captioning.
26 Again, that is a matter that could well be a live issue at trial, and that is based on my own
27 review of the evidence here. They have also blurred the constable's image. So they have
28 taken some steps in that regard, but as noted by counsel for the respondent, it is
29 incumbent on the applicant to come with substantive evidence in respect of irreparable
30 harm as opposed to simply expressing the concern that he is being subjected to irreparable
31 harm, even though those concerns in the circumstances here may well be well-founded,
32 given the environment in which we live.

33
34 So with that I am not prepared to issue an interim injunction on the terms sought. I do
35 note that this decision is based on the changes that have been made to the film and
36 counsel's representation and assurance that those changes will be reflected not only in the
37 film that is being showed in public, but those posted on the internet as early as tomorrow.

38
39 Mr. Hawkes, anything further or --

40
41 **Submissions by Mr. Hawkes (Costs)**

1
2 MR. HAWKES: Yes, My Lord, I'd like to address costs.

3
4 THE COURT: Yes?

5
6 MR. HAWKES: Of course, ordinarily costs follow the event. In
7 this unique situation, I would point out that long after we had brought the excerpt to the
8 respondent's attention, it remained online in the old form and was just changed yesterday.
9 We were informed of that overnight. And I would suggest that this be an appropriate
10 situation where costs be in the cause of the broader action where the judge, after making
11 the determinations my friend says need to be made, can determine who should be paying
12 costs of today's appearance.

13
14 THE COURT: Thank you, Mr. Hawkes? Ms. Layton?

15
16 **Submissions by Ms. Layton (Costs)**

17
18 MS. LAYTON: My Lord, frankly, this was a with prejudice
19 offer that was made on Friday morning. This application was brought on extremely short
20 notice and the respondent was put to a significant expense in responding to the
21 application. Of course, they're an independent filmmaker and resources are limited. As
22 you've noted engaging in that, you know, public interest documentary here and, frankly,
23 the respondents think that it's entitled to costs now and in any event of the cause and,
24 further, that the respondent be awarded solicitor/client costs on the basis of that "with
25 prejudice settlement" offer. Those are my submissions.

26
27 THE COURT: Thank you, Ms. Layton. I agree with Hawkes --

28
29 MS. LAYTON: Sorry, My Lord, I would like to --

30
31 THE COURT: Yes?

32
33 MS. LAYTON: Sorry, I have just been given some information
34 that I represented was incorrect. The -- the change was made on Sunday and not
35 yesterday. So the offer was on Friday. The negotiations continued and was rejected. The
36 change was made on Sunday, not in the early hours of the morning today.

37
38 **Ruling (Costs)**

39
40 THE COURT: Thank you, Ms. Layton. As I was going to say,
41 I agree with Mr. Hawkes on this one. Costs should be in the cause. Obviously, costs are

1 always a matter of discretion, but even today I heard the respondent denying that the
2 language used by Constable Harris was as he has indicated in his affidavit. I appreciate
3 that the version of the recording that the filmmaker was using earlier was not of the same
4 quality as the one that I listened to earlier today, but it could not have been clearer to me,
5 anyway, that Constable Harris said this should not have happened, as opposed to this did
6 not happen. So for that reason, I am going to make costs payable in the cause.

7
8 MR. HAWKES: Thank you very much, My Lord.

9
10 THE COURT: Thank you.

11
12 MS. LAYTON: Thank you, My Lord.

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16 PROCEEDINGS CONCLUDED
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1 **Certificate of Record**

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I, Emma Walsh, certify that this recording is the record made of the evidence in the proceedings in Court of Queen's Bench, courtroom 1002 at Calgary, Alberta, on the 24th day of November, 2020, and that I was the court official in charge of the sound-recording machine during the proceeding.

1 **Certificate of Transcript**

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I, Deborah Jane Brower, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Deborah Jane Brower, Transcriber.
Order Number: AL5116
Dated: November 25, 2020