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Amini-Kouchesfahani v. Toronto Police Services Board, 2025 ONSC 2771

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2025 ONSC 2771 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HOSSEIN AMINI-KOUCHESFAHANI Plaintiff	*Self-Represented*
– and –	
TORONTO POLICE SERVICES BOARD Defendant	*Timothy Carre* and *Graham Thomson*, for the Defendant
	HEARD: February 18, 19, 20, 21, 24, 25 ,26

REASONS FOR DECISION

CALLGHAN J.

[1] June 30, 2013 was a busy day down by Ontario Place. It was the Sunday of the Canada Day long weekend. That afternoon, Hossein Amini-Kouchesfahni, a taxi driver, was ferrying concert goers making their way to Ontario Place.

[2] Officer Meuleman had just started his shift as a traffic officer with the Toronto Police Services ("TPS"). Given the busy weekend, his superiors advised him to be particularly sensitive to motorists dropping people off on Lakeshore Boulevard in front of Ontario Place. It was a high traffic area and dropping passengers in that location was not only dangerous but contrary to the posted "no stopping" signs.

[3] This trial addressed the events that transpired when Officer Meuleman pulled over the plaintiff who was dropping passengers on Lakeshore Boulevard at the east end of Ontario Place. The plaintiff was belligerent. He erroneously believed he was being harassed as an ethnic taxi driver. The plaintiff was so belligerent that police back up was called. A confrontation ensued whereupon Officer Baled forcibly removed the plaintiff from his taxi and took him to the ground.

[4] The plaintiff sues the Toronto Police Services Board claiming, among other things, that the officers of the TPS used excessive force in removing him from the taxi and taking him to the ground. The individual officers are not named defendants. However, there is no issue that the defendant is responsible for their actions.

[5] For the reasons that follow, I find for Mr. Amini-Kouchesfahni in this action.

Facts

[6] Mr. Amini-Kouchesfahni came to Canada from Iran over 25 years ago. He made his living as a taxi driver but is now retired. He is also an editor and writer.

[7] On June 30, 2013 at approximately 3:50 p.m., the plaintiff was at the end of his shift and heading along Lakeshore Boulevard in Toronto with passengers going to Ontario Place to attend the Digital Dreams concert.

[8] Lakeshore Boulevard is a busy six-lane roadway with a posted speed limit of 60 km/hr. Cars tend to travel even faster than the posted speed limit. The plaintiff was heading east. While still at the east end of the Ontario Place site, near Remembrance Drive, the taxi stopped behind cars at a stoplight. Soon thereafter, the passengers disembarked on the south side. The roadway was posted with "no stopping" signs. The passengers exited onto a very narrow curbside as the area was encroached by fencing in preparation for the upcoming Toronto Indy car race.

[9] Officer Meuleman, on seeing the passengers disembark, signaled to the plaintiff to stop. This was the very area he was cautioned about by his superior before the start of his shift. He stopped the plaintiff in furtherance of his authority under the *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 216 ("HTA"). It was Officer Meuleman's intention to caution the driver.

[10] Prior to approaching the taxi, he did not run the licence plate of the taxi as he was aware that taxis are often not driven by the owner but by others and a licence plate search was unlikely to yield information on the driver.

[11] The interaction between the plaintiff and the police was captured on Officer Meuleman's camera on the dashboard of his cruiser. The audio was recorded from a microphone on the cruiser and a microphone on Officer Meuleman's vest.

[12] On approaching the taxi, Officer Meuleman asked whether the driver could read the "no stopping" signs that were clearly posted. Although Officer Meuleman's voice was not aggressive, the plaintiff began to swear at him. The plaintiff believed that he was being harassed as a Muslim taxi driver. In approaching the taxi, Officer Meuleman would have had no idea of the plaintiff's ethnicity.

[13] The plaintiff protested being stopped. Officer Meuleman said that it was a dangerous place for the plaintiff to stop his taxi.

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[14] The plaintiff says he then tried to engage with his passengers who were disembarking. He says he wanted to get their phone numbers as he feared a confrontation, although there was nothing about Officer Meuleman's demeanor that would suggest a confrontation was imminent or even likely. Officer Meuleman told the passengers that they were free to leave.

[15] The plaintiff became very belligerent. He verbalized his protest at being stopped with a stream of invectives. He yelled at Officer Meuleman: "fuck you", "you piece of shit—you white police", "you fuck off", "you are racist", "you're evil", "you motherfucker" and "racist police", among a host of other profanities. Interspersed with the invectives, the plaintiff asserted he had done nothing wrong and that he was being harassed.

[16] Notwithstanding his tirade, Mr. Amini-Kouchesfahni complied with Officer Meuleman's directions to first provide his driver's licence and later to provide the registration and insurance for the vehicle. The plaintiff says he was expressing his views, albeit with profanities, and he was not physically violent.

[17] During this interaction, Officer Meuleman was standing by the driver's door with his back to five lanes of traffic moving in excess of 60 km/hr. Officer Meuleman was concerned that if he returned to his police cruiser to finish his roadside investigation that the plaintiff might leave the scene or try to confront him outside the taxi which he rightly deemed to be dangerous given the traffic.

[18] As a result, Officer Meuleman requested assistance from his dispatcher. At about that time, unbeknownst to Officer Meuleman, the plaintiff had inadvertently hurled his debit machine across the front seat of his taxi which then landed outside the taxi on the passenger's side. The plaintiff, without explanation, tried to exit the taxi on the driver's side where Officer Meuleman stood. Officer Meuleman was surprised and in a precarious position as live traffic was directly at his back. Quite reasonably, Officer Meuleman pushed back on the driver's door to keep the plaintiff in the taxi. The officer could be heard over the dispatch system telling the plaintiff to stay in his car while he pushed back on the door.

[19] The exchange with the dispatcher was heard by Officer Balet and Officer Doran who were in a cruiser on their way to another part of Ontario Place. They diverted their route and attended at the scene. They were later joined by Officer Beckwith in another cruiser.

[20] As seen from the dashboard camera from Officer Meuleman's cruiser, Officer Balet stopped his cruiser facing the taxi. He exited the cruiser and walked the short distance to the driver side door of the taxi where Officer Meuleman was standing. The plaintiff continued to assert that he did nothing wrong, claimed he was being harassed, and continued cursing at the officers.

[21] Within seconds of being on the scene and without receiving any report of the situation from Officer Meuleman, Officer Balet advised the plaintiff he could be arrested, although he did not say for what. He then yelled at the plaintiff: "Shut the fuck up". Officer Balet then opened the door of

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the taxi. Officer Balet reached into the taxi and began to pull Mr. Amini-Kouchesfahni out of the taxi. After grabbing the plaintiff, Officer Balet could be heard saying “get the fuck out of the taxi”.

[22] In pulling the plaintiff from the taxi, Officer Balet states he reacted as he perceived that the plaintiff made a gesture toward a backpack on the front seat of the taxi. As he did not know what was inside the backpack, Officer Balet felt it safer to remove the plaintiff from his taxi.

[23] The plaintiff could be heard saying “they are taking me” and “I did nothing wrong”. He held on to the steering wheel. Officer Meuleman, who had begun walking to his cruiser, returned to assist Officer Balet in removing the plaintiff from the taxi. Officer Meuleman did not know why Officer Balet was removing the plaintiff from the taxi. However, he assumed Officer Balet had given a lawful instruction to the plaintiff but was unaware what that might have been.

[24] It took approximately six seconds from the time Officer Balet attended at the side of the taxi to when he opened the door to pull the plaintiff from the taxi.

[25] Once outside the taxi, Officer Balet can be seen kneeing the plaintiff twice and then delivering several punches to the plaintiff while he is on the ground. Officer Meuleman can be seen grabbing hold of the plaintiff’s lower body but he neither knees nor punches the plaintiff. While on the ground, the plaintiff can be heard saying he has a heart problem. Officer Balet responds, “You have more than a heart problem, sir”.

[26] The plaintiff was subdued and handcuffed. When brought to his feet he yelled at passersby to complain that he was being mistreated, although at about that time the audio from the dashcam goes silent.

[27] Mr. Amini-Kouchesfahni was placed in the back of Officer Meuleman’s cruiser. He had cuts to his lip and face. He spat the blood onto the inside windows of the cruiser to get the attention of the police. He asked to go to the hospital. After some time, he was taken to the hospital.

[28] Officer Meuleman and Officer Balet testified that the aggressive and erratic nature of the plaintiff caused them concern about the plaintiff’s mental stability. They took him to St. Joseph’s Hospital to have him evaluated under section 17 of the *Mental Health Act*, R.S.O. 1990, c. M.7 (“MHA”). The plaintiff was admitted under the MHA and was held for observation for 3 days and then released.

[29] While at the hospital the plaintiff went on a hunger strike. He also made several requests that the Human Rights Commission and press attend the hospital to see his facial wounds. He refused treatment and did not wash his face as he wanted the Human Rights Commission and press to see the state of his face. Neither the Human Rights Commission nor the press attended the hospital.

[30] The hospital records refer to bruising on the face, soft tissue injury and that the plaintiff complained of pain in his left eye and cheek area.

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[31] Mr. Amini-Kouchesfahni was charged later that day with the following offences:

a) disobeying a sign, in contravention of section 182(2) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8;

b) stopping a taxi on a roadway when it is practicable to stop the taxi off the roadway, in contravention of section 170(1)(a) of the *Highway Traffic Act*;

c) failing to be civil and well-behaved, in contravention of Chapter 545 of the Toronto Municipal Code; and

d) possessing liquor while in charge of a taxicab, in contravention of Chapter 545 of the Toronto Municipal Code.

[32] The charges were later dropped. Officer Meuleman testified that the charges were dropped due to a violation of s. 11(b) of the *Canadian Charter of Rights and Freedoms.*

[33] After his release from hospital, Mr. Amini-Kouchesfahni began experiencing issues with his mouth and jaw with pain in his facial region. He saw his family doctor who referred him to Dr. Lee, an oral surgeon at Mt. Sinai Hospital. Dr. Lee reported that Mr. Amini-Kouchesfahni had fractured his zygomatic arch (a bone in the cheek area). The plaintiff was suffering from, among other things, radiating pain to his left side of his face including the ear, eye, and the left temporal region.

[34] Dr. Lee performed a coronoidectomy. The surgery was intended to allow the plaintiff to open his mouth without pain. The plaintiff continued to experience jaw and neck pain. In 2015, about 18 months after the surgery, Dr. Lee referred the plaintiff to Dr. Grushka. Dr. Grushka diagnosed pain in the jaw, shoulder and neck area caused by the joint between the jaw and skull which was adversely affected by the fractured zygomatic arch. Dr. Grushka opined that the plaintiff "has been left with chronic left, greater than right-sided, facial, jaw and neck and shoulder pain as a result of the assault on June 30, 2013."

Issues

[35] The plaintiff claims he was assaulted by the police and that he was wrongfully detained. He also sues for the breach of his ss. 7, 8, 9 and 12 *Charter of Rights and Freedoms* ("*Charter*") rights, though only his s. 7 claim was meaningfully developed in the written and oral arguments. He seeks damages, including punitive damages.

Preliminary Comments

[36] At the start of this litigation, the plaintiff had the assistance of counsel, Mr. Wainberg. By the time the trial commenced, he was self-represented, but he retained Mr. Wainberg on a limited retainer to provide written submissions and to assist with some evidentiary issues. Otherwise, the plaintiff conducted the trial without the assistance of counsel and did an admirable job.

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[37] While Mr. Amini-Kouchesfahni initially tried to conduct the trial in English, it was apparent that he was better off testifying and providing his submissions in his native language and as such a translator was used.

[38] The altercation between the plaintiff and the police was captured on Officer Meuleman's dashboard camera which not only captured a video of the incident but also the audio. The video and audio are activated when a cruiser's emergency lights are engaged or by the officer activating the video and audio independently. There is also a microphone on the officer's vest.

[39] It was suggested by the plaintiff that the video and audio was manipulated in spots. The TPS's IT specialist testified and explained how that was not possible. I accept his testimony and reject the argument that Officer Meuleman's video or audio was manipulated. However, Officer Meuleman did turn off his audio for a short period after the plaintiff was handcuffed and before he was placed in the cruiser. I accept that that was an acceptable practice at the time, but it was unfortunate as audio, post-altercation, was not available.

Liability

[40] Mr. Amini-Kouchesfahni takes issue with the police conduct throughout his interactions with them. To ascertain whether the police action was authorized or otherwise tortious, it is necessary to go through the interaction of the police and the plaintiff step-by-step. As Binnie J. observed in *R. v. Nolet*, 2010 SCC 24, [2010] 1 S.C.R. 851, at para. 4 about roadside stops:

> Nevertheless, roadside stops sometimes develop in unpredictable ways. It is necessary for a court to proceed step by step through the interactions of the police and the appellants from the initial stop onwards to determine whether, as the situation developed, the police stayed within their authority, having regard to the information lawfully obtained at each stage of their inquiry.

The Initial Detention

[41] Officer Meuleman had the authority and the grounds to stop the plaintiff's taxi. This power is provided for in section 216(1) and (6) of the HTA. The plaintiff stopped in an area where stopping was prohibited. Given the speed of traffic on Lakeshore Boulevard, Officer Meuleman's concern about road safety was also warranted.

[42] When he approached the taxi, Officer Meuleman's comments asking the plaintiff if he had seen the "no stopping" signs were neither rude nor intimidating. I accept the officer's explanation that it was his intention not to ticket the plaintiff but rather to caution him not to stop in such an unsafe area.

[43] The plaintiff's response was both disproportionate and belligerent. He verbally harassed Officer Meuleman. Nothing Officer Meuleman did or said could be interpreted as being racist. As the plaintiff himself said: he lost it. Having said that, the plaintiff was compliant when asked for

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his driver's licence, registration, and insurance. There is some merit to his comment that he was expressing his views without violence, albeit in a very belligerent fashion.

[44] Officer Meuleman was acting in the lawful execution of his duties and responsibilities when he stopped the plaintiff after observing him stop where stopping was prohibited. He was acting lawfully when he detained the plaintiff to conclude his HTA investigation, including by returning to his cruiser to verify the information provided by the plaintiff. This stop was intended to be brief: *R. v. Orbanski; R. v. Elias*, 2005 SCC 37, [2005] 2 S.C.R. 3, at para. 40; *Dedman v. The Queen*, [1985] 2 S.C.R. 2, at para. 62; *Brown v. Regional Municipality of Durham Police Service Board*, 43 O.R. (3d) 223 (C.A.).

[45] As a police officer, Officer Meuleman has an inherent common law duty to protect life and property. Derived from this duty, the police have the "duty to control traffic on the roadway": *R. v. Waugh*, 2010 ONCA 100, 251 C.C.C. (3d) 139, at para. 25. Much of the interaction between Officer Meuleman and the plaintiff was Officer Meuleman reacting to a belligerent person while trying to maintain safety for the sake of the public, the plaintiff and himself on a very busy roadway. In doing so, he was acting lawfully within his inherent duty as a police officer.

[46] The plaintiff complains that Officer Meuleman blocked him from exiting his taxi to retrieve his debit machine. The officer was being placed in a very dangerous position. His back was very close to live traffic. For his safety, for the plaintiff's safety and for the safety of the public, he wisely pushed back, eventually shutting the door. This is not actionable conduct; rather, Officer Meuleman was performing his lawful duty.

[47] In the initial stop and the dealings with the plaintiff, I find no fault with Officer Meuleman's conduct.

Removal from the taxi

[48] Matters escalated when police back-up arrived. Officer Balet testified that he shouted at the plaintiff to shock the plaintiff into stopping his yelling and cursing. It had the opposite effect. He further testified that he opened the taxi door to remove the plaintiff because he says he saw the plaintiff reach for a green backpack on the passenger seat. He says he did not know what was in the backpack but for safety reasons he ordered the plaintiff out of the taxi. When he did not comply, he forcefully removed the plaintiff, with the eventual assistance of Officer Meuleman.

[49] As noted in *Dedman v. The Queen*, [1985] 2 S.C.R. 2, police powers are limited. Indeed, they are more circumscribed than not. In *Dedman*, the Supreme Court commented that: "The interference with liberty must be necessary for the carrying out of the particular police duty and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference": at para. 69.

[50] Officer Balet says he was acting to ensure officer and public safety when he ordered Mr. Amini-Kouchesfahni to get out of the taxi because he saw the plaintiff reach for the backpack. He

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expressly said he was not acting pursuant to any arrest authority or apprehending the plaintiff pursuant to the MHA.

[51] When he approached the taxi, Officer Balet states that he was going to take control of the situation. However, he never spoke with Officer Meuleman which would be the logical first step as the new person on the scene. He never learned that the plaintiff, while belligerent, had complied with Officer Meuleman's request for documentation or that the only offence contemplated was an HTA or by-law offence.

[52] Instead, Officer Balet immediately engaged with the plaintiff telling him he could be arrested for an undisclosed offence and to "shut the fuck up". Within seconds he had opened the door and began to pull the plaintiff out of the taxi. There was nothing said about the backpack. The video discloses no gestures or other indication that the backpack was an issue. Mr. Amini-Kouchesfahni states that he did not make any move or gesture toward the backpack but that his hands were affixed to the steering wheel.

[53] In addition, there was no discussion by Officer Balet with either the plaintiff or the other officers about the backpack either before, during or after the plaintiff was handcuffed. Officer Balet took no steps to segregate or secure the backpack. In fact, he thought the tow truck operator later secured the backpack as part of his duties to preserve valuables. As it happened, Officer Meuleman testified that he picked up the backpack and the plaintiff's other valuables to transport to the hospital with the plaintiff. The backpack was identified by Officer Meuleman as yellow, not green.

[54] The backpack was opened at the hospital as the hospital needed to know its contents if it was to stay with the plaintiff. As it happened, there were a few beers and a bottle of alcohol in the backpack. The plaintiff had bought the beer and alcohol as he was intending on watching fireworks on Canada Day with a friend on his balcony. He was charged with violating the municipal by-law that precluded taxi operators from possessing alcohol while providing taxi services.

[55] In addition, the officers attempted to forcibly remove the plaintiff from the taxi. The plaintiff's hands were firmly on the steering wheel which necessitated the assistance of Officer Meuleman. Officers Balet and Meuleman forcibly removed the plaintiff from the taxi. This all happened in a second or two. It is hard to accept that if the plaintiff reached for the backpack that he would, in the second or two that followed, have been able to get a firm grip on the steering wheel such that it required Officers Balet and Meuleman to use considerable force to remove the plaintiff from the taxi.

[56] In my view, Officer Balet overreacted to the belligerence of the plaintiff. From the moment he arrived on the scene, Officer Balet was intent on confronting the plaintiff. He took no time to assess the scene. He confronted the plaintiff without speaking with Officer Meuleman. There is no support that the plaintiff moved toward the backpack. Officer Balet made no mention of the backpack to the other officers at the time of the incident. He did not seek to secure the backpack but rather it was removed by Officer Meuleman without any appreciation of Officer Balet's story.

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I accept the plaintiff's testimony that his hands were on the steering wheel of his taxi, and that he did not reach for the backpack. Accordingly, there was no imminent or other threat that would warrant forcibly removing the plaintiff from the taxi.

Takedown

[57] Counsel for the defendant accepts that if Officer Balet was not authorized to remove the plaintiff from the taxi, then the actions thereafter in taking the plaintiff to the ground are unreasonable and unjustified. As I have found there was no basis to remove the plaintiff from the taxi, the actions in taking the plaintiff to the ground amounted to an unlawful battery.

[58] In the event my analysis above is wrong and Officer Balet was justified in ordering the plaintiff from his taxi, it is necessary to consider whether the actions and force used to remove the plaintiff from the taxi and taking him to the ground were reasonable.

[59] The defendant relies on s. 25(1) of the *Criminal Code* to justify the use of force in this case. Section 25(1) provides that a police officer is justified "in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the circumstances": *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 34. While the police may have to resort to force to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of "proportionality, necessity and reasonableness": *R. v. Nasogaluak*, at para. 32. Whether the force used is necessary is to be judged on a subjective-objective basis.

[60] In applying the test, it must be remembered that the police are not to be held to a standard of perfection but rather must be given some leeway having regard to the exigent circumstances of the moment. In an arrest, some forceful actions may be seen to be reasonable, while others may be seen to be excessive: *R. v. Rice*, 2015 ONCA 478, at para. 8.

[61] I was not directed to any case where s. 25(1) was used to justify force not in the context of an arrest but in circumstances where officer safety alone was at issue. However, as stated by the Ontario Court of Appeal, "police officers who engage a member of the public in an investigative detention may take reasonable steps to protect their safety and the safety of the public": *R. v. Dunkley*, 2016 ONCA 597, 131 O.R. (3d) 721, at para. 37. Assuming the test remains the same, I will now examine the sequence of events. I note that neither side called a use of force expert in this case.

[62] I accept that reasonable force was used to remove the plaintiff from the taxi. There were no observable kicks as suggested by the plaintiff. Rather, Officer Balet struck the plaintiff's arm to loosen his hand from the steering wheel and force was then used to remove him from the taxi as he was actively resisting. Had the command been lawful for the plaintiff to exit the taxi, I would have found the force used to remove the plaintiff from the taxi was reasonable.

[63] Having removed the plaintiff from the taxi, the officers attempted to take the plaintiff to the ground. It was explained that this was the safest way to take control of the plaintiff. By this

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time, Officer Beckwith's cruiser was blocking the second lane of traffic. Officer Balet can be seen clearly kneeing the plaintiff three times as he is coming to the ground. Officer Balet explained that these blows were needed to control the plaintiff in bringing him to the ground while ensuring he fell away from the traffic. There are then a series of five punches. Again, it was said that these punches were needed to control the plaintiff. Three punches are directed at his head while he is completely on the ground. At the same time Officer Meuleman has his knee on the back of the plaintiff's legs, controlling his lower body.

[64] While the knee blows by Officer Balet might well have been reasonable to ensure the plaintiff fell away from the traffic, the punches served no reasonable purpose. In my view, the punches were unnecessary and excessive. This situation is like the case of *Wynter v. Toronto Police Services Board*, 2018 ONSC 3271, at paras. 155-6, where there were unnecessary blows during an otherwise lawful arrest. In my view, the blows of Officer Balet were directed at Mr. Amini-Kouchesfahni's head region, although the exact location cannot be seen in the video. In my view, the punches constitute excessive force.

[65] Having accepted that the force used was excessive, the plaintiff asserts it violated his fundamental right to security of the person as guaranteed pursuant to s. 7 of the *Charter*. As explained below, the use of excessive force resulted in injury to the plaintiff. In *R. v. Pan*, 2012 ONCA 581, 292 C.C.C. (3d) 440, at para. 47, the Court of Appeal stated that excessive force may constitute a breach of s. 7 *Charter* rights:

> Excessive force may give rise to a breach of s. 7 if it substantially interferes with an accused's security of the person interest. The use of force that is not excessive – even force that gives rise to foreseeable injury – would not likely amount to a breach of s. 7. The police are entitled to use force to make an arrest as long as the force used is proportional, reasonable and necessary: see *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206.

[66] Given the excessive use of force which caused injury to the plaintiff, I find that the plaintiff's s. 7 *Charter* right to security of the person was violated. I also find that the breach was not committed in accordance with any principle of fundamental justice: *Carr v. Ottawa Police Services Board*, 2017 ONSC 4331, at para. 141.

Apprehension under MHA

[67] The plaintiff was eventually moved to Officer Meuleman's cruiser. At the time, he was bleeding from his mouth and cheek. He was somewhat calmer but was still cursing and yelling at Officer Meuleman. The plaintiff asked to go to the hospital. At the same time, Officer Meuleman concluded that the plaintiff should be detained for an assessment under the MHA. Officer Meuleman inquired if the plaintiff had a mental condition, but his inquiry was met with silence.

[68] Section 17 of the MHA provides:

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> Where a police officer has reasonable and probable grounds to believe that a person is acting or has acted in a disorderly manner and has reasonable cause to believe that the person,
>
> (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
>
> (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or
>
> (c) has shown or is showing a lack of competence to care for himself or herself,
>
> and in addition, the police officer is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,
>
> (d) serious bodily harm to the person;
>
> (e) serious bodily harm to another person; or
>
> (f) serious physical impairment of the person,
>
> and that it would be dangerous to proceed under section 16, the police officer may take the person in custody to an appropriate place for examination by a physician. 2000, c. 9, s. 5.

[69] Officer Meuleman concluded that the plaintiff was acting in a disorderly manner and that he would cause danger to the public, particularly if he resumed driving. There is no question that the behaviour of Mr. Amini-Kouchesfahni was erratic and, as the plaintiff himself described, "he lost his mind". He was cursing at such a rate that he had froth coming from his mouth.

[70] The provisions of s. 17 of the MHA have not been subject to much, if any, judicial interpretation. However, the concept of reasonable and probable grounds is well considered by the courts in relation to police detentions and arrests: *R. v. Storrey*, 1990 CanLII 125 (SCC), [1990] 1 SCR 24. In that context, reasonable and probable grounds require a subjective assessment by the officer that must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the detention. In an arrest, reasonable and probable grounds do not require the police to establish a *prima facie* case for conviction before making the arrest.

[71] In my view, s. 17, by importing the reasonable and probable grounds test, requires that the officer must have a subjective view that there are reasonable and probable grounds to conclude that the elements in s. 17 are present and that the Officer's subjective view is justifiable from an objective point of view. This does not require the police to have a *prima facie* diagnosis of a mental disorder. The police are clearly not able to make a diagnosis, *prima facie* or otherwise, of the

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person's mental state. In addition, the courts have held that the phrase "mental disorder" is inherently broad and includes "any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion": *Cooper v. The Queen*, 1979 CanLII 63 (SCC), [1980] 1 S.C.R. 1149, at p. 1159; *Nelson v. Livermore*, 2017 ONCA 712 , at para. 57. Rather, the officer must have a reasonable belief that the person exhibits conduct that may be the result of an illness, disorder or abnormal condition which impairs the mind and its functioning, including conditions that may be transitory and that the officer's belief is justifiable from an objective point of view.

[72] In my view, Officer Meuleman had reasonable and probable grounds to believe that the plaintiff was in such a state that Mr. Amini-Kouchesfahni was suffering from an abnormal mental condition and that to allow him to continue to drive would endanger the public. In my view, a reasonable person viewing the plaintiff's conduct and interactions would find Officer Meuleman's assessment to be reasonable. Accordingly, I accept that it was reasonable for Officer Meuleman to proceed to St. Joseph's Hospital where his concerns were validated by the plaintiff's admission for observation and a psychiatric assessment under the MHA.

[73] In taking the plaintiff to the hospital, it was then reasonable for the police to secure the plaintiff's vehicle and belongings which remained at the scene and in police custody. In particular, it was reasonable for Officer Meuleman to secure the plaintiff's perceived valuables, including the backpack, and have them travel with the plaintiff to the hospital: *R. v. Nicolosi* (1998), 40 O.R. (3d) 417 (C.A.), at paras. 29-30; *R. v. Wint*, 2009 ONCA 52, 93 O.R. (3d) 514, at para. 15. As noted in *Wint*, the police "must be able to search and itemize the contents of objects such as purses, wallets and bags like the one observed in this case, to determine their contents". It was reasonable for the police to do an inventory search of the backpack and it did not constitute a breach of the plaintiff's rights.

Conclusion

[74] I have found that Officer Balet had no authority to order the plaintiff from his taxi. The actions thereafter were unwarranted as it relates to the physical conduct in removing him from the taxi and taking him to the ground. The actions constituted the civil tort of battery: *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24, [2000] 1 S.C.R. 551, at para. 4. They also constituted a breach of s. 7 of the *Charter*.

[75] The initial stop by Officer Meuleman was authorized and there was no evidence that Officer Meuleman's conduct was racially motivated in stopping the plaintiff. I accept that Officer Meuleman had grounds to apprehend the plaintiff pursuant to the MHA and deliver him to St. Joseph's Hospital. I also find no fault in his securing the backpack when he removed it from the vehicle to transport it to the hospital.

Non-Pecuniary Compensatory Damages

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[76] Non-pecuniary general damages are intended to compensate victims of torts for a broad category of losses including physical and mental injuries, the loss of enjoyment of life, and inconvenience: *Cinar Corporation v. Robinson*, 2013 SCC 73), [2013] 3 SCR 1168, at para. 95. In assessing an appropriate damage amount, the court looks to the assessment of damages in similar cases. Of course, each case is unique and assessing damages is not scientific. Nonetheless, the court tries to treat like cases similarly: *Cinar Corporation*, at para. 106. In that regard, in applying precedents, an inflationary adjustment may be required when considering the applicability of any comparable award. Where the conduct involves aggravating circumstances, the court may consider an additional amount to compensate for any additional distress or humiliation involved, and not otherwise compensated.

[77] Mr. Amini-Kouchesfahni was taken hard to the ground while being punched. He was bleeding at the scene. He initially refused treatment at St. Joseph's Hospital because he wanted the Human Rights Commission to see the blood on his face. No one came. He also went on a hunger strike for three days while he was under observation at the hospital.

[78] The hospital records noted contusions to his face, although there was no report from the hospital addressing the extent of the contusions or any underlying injury. It is not clear whether the plaintiff ever had or permitted a full assessment of any injuries.

[79] When he returned home, the plaintiff began to experience pain in his jaw area and neck. He went to his family doctor on July 3, 2013, who noted the plaintiff's "bruised face". He returned the following weeks, not having improved. He had a CAT scan and was referred to Dr. Lee, a dental surgeon at Mt. Sinai Hospital.

[80] On August 15, 2013, Dr. Lee diagnosed a fracture of the zygomatic arch. He noted that when the plaintiff opened his mouth there was an obstruction with the zygomatic arch which had been fractured and self-healed giving rise to an obstruction. The obstruction was causing facial pain that radiated to the plaintiff's left temporal area causing headaches as well as neck pain. The plaintiff's ability to open his mouth was restricted. The fracture also created a depression on his face and facial asymmetry. The facial asymmetry was not a concern for the plaintiff but the pain and his inability to fully open his mouth were concerns.

[81] To relieve the problem, Dr. Lee performed a surgery known as a coronoidectomy which was intended to reduce or remove the obstruction to improve the plaintiff's ability to open his mouth and improve his jaw movement which, in turn, should alleviate the pain. The surgery took place on October 1, 2013.

[82] After the surgery, the plaintiff continued to have problems opening his mouth and experienced pain. In 2015, Dr. Lee referred the plaintiff to Dr. Grushka, an oral surgeon and pain specialist. Dr. Grushka was the only medical witness who testified at trial. She did not provide a medical-legal opinion but provided several reports to Dr. Lee which were submitted under s. 52 of the *Evidence Act*, R.S.O. 1990, c. E.23 and the defendant cross-examined her on those reports.

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[83] Notwithstanding the surgery, the plaintiff complained of left-sided facial pain, headaches and neck/shoulder pain that radiated to his head. Dr. Grushka opined that the pain was due to alterations to the left TM joint, being the joint connecting the lower jawbone to the skull, which were caused by the fracture to the zygomatic arch. The impact of the fractured arch also changed his bite which necessitated him using a mouthguard when sleeping to ameliorate grinding of the teeth. His face continued to be asymmetrical.

[84] Dr. Grushka is a doctor of dentistry, not medicine. Her fee was not covered by OHIP which restricted the plaintiff's visits. The plaintiff had limited means and to allow the treatment to be covered by OHIP, Dr. Grushka would make recommendations to Dr. Lee so that treatment could be prescribed and then covered by provincial health insurance, including physiotherapy treatment and medication.

[85] Dr. Grushka provided several reports up to 2020 that confirm that the plaintiff continued to experience discomfort in his jaw area and his neck. Her reports indicated the plaintiff did all he could to alleviate the pain such as physiotherapy, massage therapy, mobilization exercises, wearing a mouthguard, chiropractic treatment and medication, although he could not continue with all the treatments due to costs.

[86] In cross-examination, Dr. Grushka explained that the fracture caused the plaintiff's jaw to misalign which caused him to grind or clench his teeth. She described that he had "heavy wear on his teeth". This is known as bruxism. Bruxism can not only wear down the teeth but cause the "jaw to pop". Over time, it creates a tightening of the jaw that worsens, which in turn can cause shoulder and neck pain emanating from the jaw area.

[87] Dr. Grushka testified that the jaw and facial pain suffered by the plaintiff were directly related to the zygomatic arch being fractured and the surgical response. She also testified that the zygomatic arch could be fractured by a blow to the head.

[88] Dr. Grushka has not treated the plaintiff since 2020. The plaintiff testified that he did not have the money to see her any further. The plaintiff said he continues to suffer pain on the left side of his face and down his neck and shoulders. While he wears the mouthguard at night, he continues to grind his teeth. He has lost two teeth in the process.

[89] I accept that the zygomatic arch was fractured in the takedown on June 30, 2013. I also accept the evidence of Dr. Grushka that the difficulties suffered by the plaintiff are because of the fractured arch, including facial pain, teeth grinding and clenching, and pain in the shoulder and neck.

[90] I accept that the difficulties with his jaw have caused emotional upset for the plaintiff, as one would expect having to deal with such a problem for the past decade. However, there is no medical diagnosis of a psychological or psychiatric illness. There was evidence from the plaintiff's brother who testified as to the impact on the plaintiff, including how the plaintiff has suffered since the incident and his continued distrust of the police.

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[91] Mr. Amini-Kouchesfahni was diagnosed with oral cancer in 2023. While it was suggested by the plaintiff that the cancer may be related to the problems associated with the zygomatic arch, there was no evidence to support such a conclusion.

[92] On the amount for general damages, the plaintiff's brief prepared by Mr. Wainberg asserts that the general damages should be $125,000 and relies upon *Milicic v. Liberty Entertainment Group*, 2019 ONSC 379. In that case, the plaintiff was assaulted, fell to the ground, and was assaulted again. He was unconscious and taken by ambulance to the hospital. He had a concussion and several fractures, including a broken jaw which was wired shut for several weeks. He was left with ongoing facial paralysis, headaches, an inability to sleep, difficulty eating, memory and fatigue problems. There were several medical opinions supporting the damages, including evidence from a psychologist and psychiatrist attesting to ongoing cognitive and emotional issues. Justice Wilson awarded $125,000.

[93] At the other end, the defendant submits that this case is more like *Leighton v. Best*, 2009 CanLII 25972 (Ont. S.C.). In that case, the plaintiff was accidentally injured in a recreational hockey game by a high stick. As a result, the plaintiff suffered jaw pain with fatigue when chewing, clicking and snapping of the TM joint, space between his lower teeth and his bite was "off". It is not clear as to the nature of the medical evidence in that case. The court assessed $35,000 of general damages.

[94] In this case, the plaintiff has continued to suffer discomfort because of the fractured zygomatic arch. However, the disability has not been so significant to impede his work. He returned to work after the incident and makes no wage claim. I accept that aside from the physical impact, the incident also caused the plaintiff to suffer emotional upset. However, there is no psychiatric or psychological opinion regarding the plaintiff that may be relied upon in this case.

[95] In my view, the plaintiff's damages are not at the level described in *Milicic* but appear to be more extensive than in *Leighton.* With inflation, the damages in *Leighton* would be in the range of $50,000 if assessed today. Using *Leighton* as a measure, I set the general damage award at $80,000.

[96] The plaintiff also seeks aggravated damages. As noted, aggravated damages are awarded "when the reprehensible or outrageous nature of the defendant's conduct causes a loss of dignity, humiliation, additional psychological injury, or harm to the plaintiff's feelings". See *Barker v Barker*, 2022 ONCA 567, at para 257. They are compensatory in nature. The Court of Appeal in *Nissen v. Durham Regional Police Services Board*, 2017 ONCA 10, at para. 55, explained the award as follows:

> Aggravated damages aim not at punishing wrongful behaviour, but at compensating the injured plaintiff for the full extent of the plaintiff's loss. Very often, aggravation of the plaintiff's loss will be caused by outrageous or reprehensible conduct, as it is that quality of the defendant's conduct that causes additional distress or humiliation that calls for compensation not captured by a purely conventional award. I am not

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> persuaded, however, that a trial judge can only take aggravating features into account where there has been outrageous or reprehensible conduct.

[97] Neither of the two cases cited in assessing general damage included an amount for aggravated award. In this case, the nature of the assault, including the fact that Mr. Amini-Kouchesfahni was subject to a battery in a very public place, warrants an award of aggravated damages. The public nature of the incident enhanced the loss of dignity , enhanced the humiliation, and enhanced the hurt feelings of Mr. Amini-Kouchesfahni. The plaintiff's dignity and worth as a person were compromised in this incident, and he carries with him a distrust of the police and continued hurt feelings.

[98] I recognise that the general damage award includes an element for the plaintiff's emotional upset, but that amount does not include the loss of dignity, humiliation and hurt feelings arising from the nature of this incident. Having regard to the general damages already awarded, I assess the aggravated damages at $20,000.

Special Damages

[99] The parties agreed on special damages of $21,722.16 for medical costs. There was no wage claim or other special damages.

Punitive Damages

[100] The plaintiff also claims punitive damages. Punitive damages are the exception, not the rule: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595 . Punitive damages may be awarded:

- where there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- to punish a defendant; not as compensatory damages for a plaintiff;
- to deter others from acting in the same manner as the individual against whom punitive damages are awarded;
- to express the community's denunciation of the behaviour giving rise to the award; and
- when the compensatory damages awarded are insufficient to accomplish the objectives of punishment, deterrence, and denunciation.

[101] In this case, Officer Balet overreacted. He responded to a belligerent person by removing him from his taxi and using excessive force to take him to the ground. The police interact with a wide range of people, and some are bound to be belligerent. However, the plaintiff was not

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physically violent. Officer Balet reacted inappropriately. His violent reaction injured the plaintiff and should be denounced.

[102] Confidence in the police is key to our civil society. Society expects that officers are not only trained but capable of handling difficult people, even belligerent ones. This incident undermines public confidence in the police and their ability to act in an appropriate fashion when confronted with a difficult person. The TPS needs to ensure that such action is not emulated by others. Having regard to the compensatory amounts awarded, I am of the view an award of punitive damages is still warranted to denounce the conduct in this case: *Hockley v. Riley*, 2007 ONCA 804, 88 O.R. (3d) 1, at para. 29; *Ahluwalia v. Ahluwalia*, 2023 ONCA 476, 167 OR (3d) 561, at para. 133.

[103] In *Parsons v. Niagara (Regional Municipality) Police Services Board* (2009), 193 C.R.R. (2d) 330 (Ont. S.C.), the plaintiff was awarded $20,000 in punitive damages. The plaintiff, who was known to the police, was subject to an unreasonable traffic stop, falsely arrested, subjected to excessive force although he posed no threat to the officers, and charged maliciously. The plaintiff was tasered after he was handcuffed, including once in the genitals. The court commented adversely about the quality of the police officers' evidence. This case is not as severe or abusive as *Parsons.*

[104] In the circumstances, using *Parsons* as a guide and having regard to inflation, I award $17,500 in punitive damages which is not subject to pre-judgment interest: *Leskovar v. Braithwaite*, 2008 CarswellOnt 6080 (S.C.), at para. 41.

Charter Damages

[105] Finally, the plaintiff raised various *Charter* violations in his claim. He claimed damages as a remedy under s. 24(1) of the *Charter*. The *Charter* allegations were not developed in any meaningful way in the written argument filed by counsel for the plaintiff, or in the plaintiff's oral submissions. As such, I have only addressed the *Charter* allegations where it was clearly advanced by the plaintiff and the defendant provided a response. I found that the force of the takedown violated s. 7 of the *Charter.*

[106] In the case of *Charte*r claims, damages can be awarded i) for the claimant's personal loss, whether physical, psychological, pecuniary or involving intangible interests; (ii) to vindicate the harm that the infringement causes society; and (iii) to deter state agents from committing future *Charter* breaches: S*tewart v. Toronto (Police Services Board)*, 2020 ONCA 255, at para. 122. Even if damages are functionally justified, considerations may apply that render s. 24(1) damages inappropriate or unjust.

[107] The above heads of compensation have already been acknowledged and compensation has already been provided to the plaintiff. The plaintiff's loss, both general and special damages, has now been compensated. The punitive damages awarded vindicate society's harm and are intended

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to deter similar actions in the future. In my view, there are no further damages that could or ought to be awarded for the s. 7 *Charter* breach.

Disposition

[108] Mr. Amini-Kouchesfahni is entitled to judgment against the defendant in the amount of $121,722.16 plus pre-judgment interest. The plaintiff is also entitled to an award of $17,500 in punitive damages, not subject to pre-judgment interest. Both amounts are subject to post-judgment interest. All interest is pursuant to the applicable rates in the *Courts of Justice Act*.

Costs

[109] As to costs, the parties are urged to agree on costs. If not, any party seeking costs shall serve and file costs submissions of no more than 5 pages within 10 days of the receipt of this decision. Any responding submissions of no more than 5 pages shall be served and filed 5 days after receipt of the requesting submissions. Reply submissions of no more than 3 pages may be filed within 3 days of receipt of the responding submissions.

Callaghan J.

Released: May 15, 2025

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CITATION: *Hossein Amini-Kouchesfahani v. Toronto Police Services Board*, 2025 ONSC 2771
COURT FILE NO.: CV-15-529830
DATE: 20250515

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HOSSEIN AMINI-KOUCHESFAHANI

Plaintiff

– and –

TORONTO POLICE SERVICES BOARD

Defendant

REASONS FOR DECISION

Callaghan J.

Released: May 15, 2025