

# Ontario Court of Appeal Extends Limitation Period for Police Battery Claim

December 18, 2017

Winmill v. Woodstock (Police Services Board), 2017 ONCA 962

Following a physical altercation between the plaintiff and one of his sons, several **officers responded to a call made by the plaintiff's wife. Upon arrival, officers discovered the plaintiff alone in his home.** At some point an altercation ensued between the plaintiff and two officers who allegedly took the plaintiff to the ground and assaulted him. The plaintiff was ultimately charged with assaulting an officer and resisting arrest. The plaintiff was not charged in relation to the initial altercation with his son.

On February 17, 2016, the plaintiff was acquitted of both criminal charges. On June 2, 2016, two years and one day after his altercation with police, the plaintiff filed a Notice of Action against the Woodstock Police Services Board alleging negligent investigation and battery. Shortly thereafter, on June 22, 2016, the plaintiff filed a Statement of Claim. Following some procedural hearings and amendments to the Statement of Claim, the **police defendants brought a Rule 21.01 motion to strike the plaintiff's claim on the basis that the plaintiff's claim in battery was statute barred.**

## Superior Court Decision

At the hearing, the presiding judge indicated that she would treat the motion to strike like a motion for Summary Judgment and heard evidence. It was undisputed that the plaintiff was aware of his injuries on June 1, 2014, and that the defendants had caused his **injuries. The analysis focused on s. 5(1)(a)(iv) of the Limitations Act ("Act") which provides that a claim is discovered on the earlier of the day on which the plaintiff first knew that, having regard to the nature of the injury, loss or damage, a proceeding would be "an appropriate means" to seek to remedy it.**

The plaintiff advanced multiple arguments, most notably that it would not have been appropriate to commence an action in battery until the outcome of the underlying criminal charges. The court rejected this argument and in doing so affirmed that there can be multiple limitation periods in a single action, even when the action arises out of a single event. Further, the motion judge affirmed the law that a limitation period for a claim in negligent investigation does not begin to run until the conclusion of the **underlying charges. Ultimately, the motion judge ruled that the plaintiff's claim for battery**

was statute barred pursuant to the Act. The plaintiff's claim for negligent investigation survived. The plaintiff appealed.

## **Court of Appeal Decision**

On December 7, 2017, the majority of the three-member panel of the Court of Appeal found that the motion judge erred for three reasons. First, the Court noted that the negligent investigation claim was continuing and found that this claim was "inextricably intertwined" with the claim for battery as it covered the same parties and events. Second, the Court found that it made sense for the plaintiff to postpone making a claim against the police until his criminal charges resolved. In reaching this conclusion, the Court likened the underlying charges and the tort claim of battery to being "two sides of the same coin" or "mirror images of each other". In addition, the Court noted that the verdict in the appellant's criminal trial on the assault charge was a crucial and determinative factor in the appellant's decision to proceed with a civil action grounded in a battery claim. Third, the Court found that the appellant was justified in waiting for the outcome of the criminal charges as it would be inconsistent to ask a civil court to rule on a criminal prosecution prior to the outcome of the charge. The majority held that the discoverability date for the plaintiff's battery claim was the same as the date for the negligent investigation claim and was thus not statute barred.

## **Significance of the Decision**

This decision appears to extend the limitation period for a battery claim against the police until the conclusion of an underlying criminal charge, a finding contrary to the previous state of the law. Further, it also seemingly expands the scope of the "an appropriate means to seek to remedy" provision of the Act.

In a strong dissent, Justice Huscroft wrote that this is a "straightforward case", and that the plaintiff knew that he had suffered an injury, knew who caused the injury, and knew that a legal proceeding was an appropriate means to seek a remedy on the day of the altercation with police. He agreed with previous case law which cites that a plaintiff cannot "delay the start of a limitation period for an intentional tort [battery] in order to await an outcome of related criminal proceedings".

It is unknown at this time whether the defendants will appeal the decision.

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