Ontario court clarifies law for the commencement of limitation periods for prosecutorial torts

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In the recent decision of *MacKinnon v. Halton Regional Police Services Board et al*, 2020 ONSC 6908, the Ontario Superior Court dismissed a plaintiff's claim on a motion for summary judgment for being commenced outside of the two-year limitation period. BLG represented the defendants.

Background

On September 6, 2014, the plaintiff, Robert MacKinnon, was charged with respect to three allegedly fraudulent wire transfers. The Crown eventually stayed the charges on March 27, 2015 pursuant to s. 579 of the *Criminal Code*.

On March 23, 2018, Mr. MacKinnon commenced an action against the Halton Regional Police Service and several named officers alleging malicious prosecution, negligent investigation and breach of his *Charter* rights.

The defendants brought a summary judgment motion on the basis that Mr. MacKinnon's action was statute barred as the limitation period for the commencement of the plaintiff's action expired on March 27, 2017 but he did not commence his action until March 23, 2018.

In response, the plaintiff argued that the limitation period did not start to run until one year after the Crown stay. This is because, pursuant to s. 579(2) of the *Criminal Code*, the Crown has one year to reinstate the charges. Accordingly, the plaintiff submitted that it was appropriate for him to wait for that one-year period to expire before commencing his civil claim.

Outcome

Justice Gibson confirmed that a stay of proceedings entered by the Crown constitutes a favourable termination of proceedings for the purpose of prosecutorial torts, such as

negligent investigation. Therefore, the appropriate start date for the limitation clock is the date that criminal charges are stayed.

Although the Crown may recommence proceedings in a one-year period, the Crown does not have *carte blanche* to reinstate the charges and indeed, may be subject to attack based on abuse of process and section 11(b) *Charter* arguments. In any event, Justice Gibson found that the date of the stay is the date that the plaintiff should know that a proceeding would be an appropriate means to seek a remedy and there was no valid juridical reason to wait beyond this date. Of note, Justice Gibson also commented that such an argument has been considered and dismissed in other provinces (Saskatchewan, Price Edward Island and British Columbia) and that the law should therefore be the same in Ontario.

Takeaway

This case clarifies that the limitation period for prosecutorial torts begins to run on the day that charges are resolved in favour of an accused, which includes a Crown stay pursuant to s. 579 of the *Criminal Code*. Accordingly, the one-year period following the stay does not extend the plaintiff's statutory timeframe to commence his or her claim.

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