

# Ontario court dismisses a claim against the Ontario Provincial Police on summary judgment

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In [Rebello v. Ontario, 2023 ONSC 3574](#), the plaintiff, an experienced self-litigant, commenced an action against the Ontario Provincial Police (OPP) following a number of interactions with OPP officers over the span of several years. Her claim, which included allegations of negligence and breaches of various *Charter* rights, was ultimately dismissed.

## Background

The plaintiff had a lengthy history with the OPP. By way of example, on November 25, 2015, the plaintiff contacted the OPP to complain about a car that frequently drove by her home in the early morning. The OPP investigated and learned that the driver was delivering a newspaper to the plaintiff's neighbour. The OPP concluded that there was no criminal activity and relayed this information to the plaintiff.

On April 23, 2018, the plaintiff again contacted the OPP to complain that a woman was trespassing on her property. The OPP investigated and spoke with the plaintiff's neighbour, who advised that his wife suffered from dementia and other severe mental health issues, and sometimes wandered off. The OPP concluded that there was no criminal activity and relayed this information to the plaintiff.

The plaintiff did not accept the results of the OPP's investigations, and subsequently issued a Statement of Claim, alleging that the OPP was liable for negligent investigation, negligent supervision, intentional infliction of mental suffering, breach of privacy rights, defamation, and breach of her *Charter* rights. The OPP subsequently moved for summary judgment to dismiss the plaintiff's claim.

## Details of the decision

The motion judge was satisfied that this case was suitable for summary judgment. The plaintiff's claim was dismissed.

On an evidentiary basis, the judge found that the plaintiff failed to put their "best foot forward," as required, and while the plaintiff indicated that she had further

documentation, including video and audio recordings, none was produced. Further, in addition to weighing the evidence, the motion judge evaluated the credibility of the plaintiff and drew reasonable inferences from her evidence. His Honour found the plaintiff's evidence was inconsistent and contradicted by various documents, including the officers' contemporaneous, handwritten memo book notes.

With respect to the negligent investigation claim, the motion judge reiterated that a victim of crime, in this case the plaintiff, has no cause of action against the police for a negligent investigation: the police do not owe a private law duty of care to victims of crime in relation to the investigation of alleged crimes. This claim was therefore dismissed.

As to the negligent supervision claim, the plaintiff argued that the OPP Commissioner owed her a private law duty of care to have policies, procedures, systems, supervision and training, and operations in place for OPP officers. The motion judge disagreed. The OPP Commissioner owes public law duties under the *Police Services Act*, which do not create a private law duty of care owed to citizens. In the circumstances, the plaintiff did not lead evidence of an independent and personal failure of the commissioner to comply with his or her obligations under the *Police Services Act*, and thus the claim failed.

The plaintiff also alleged that the OPP officers were liable for the intentional infliction of mental suffering. However, the plaintiff was unable to satisfy her burden to establish that the officers' conduct was flagrant and outrageous; calculated to produce harm; and resulted in visible and provable illness.

The plaintiff further sought damages for breach of privacy and alleged that the OPP officers filed false reports in her name without her knowledge in a "public database." The motion judge disagreed and commented that even if an OPP officer breached an applicable privacy statute, there is no tort for breach of a statutory duty. As well, there was no evidence that any police reports were placed in a "public database" (nor was there any evidence that such a database existed). Regardless, even if an OPP report contained false information based on the recorded observations and opinions of a police officer, this cannot be described as a breach of privacy.

The plaintiff also advanced a claim in defamation against the OPP because of the alleged false reports; however, she did not place those reports in evidence on the motion. She also did not set out the precise words that she alleged were defamatory (although the motion judge was able to infer the precise words from her submissions). The motion judge concluded, however, that the mere fact of making a police report does not amount to a publication where, as in the present case, the police reports are not made available to the public. There was no evidence that the reports were ever disclosed to a member of the public and, regardless, the motion judge was satisfied that the defence of qualified privilege would have been established in any event. The OPP officers are under a legal duty to keep notes, prepare reports, file the reports in the OPP's database, and review prior reports related to the same occurrence.

Finally, the plaintiff sought damages for breach of her section 7 and 15 *Charter* rights. The plaintiff alleged, among other things, that her section 7 *Charter* rights were violated because the OPP ignored the "ongoing multiple attacks and harm done to [her] and her property." The motion judge did not agree and noted that there was no credible evidence in the record supporting such allegations.

With respect to section 15 of the *Charter*, the plaintiff claimed that the OPP officers breached her right and discriminated against her because they refused to believe any of her complaints against individuals who were White. Again, the motion judge disagreed, noting that the plaintiff filed no evidence to support her allegation or that there was any nexus between the actions of the OPP and an enumerated or analogous ground listed in section 15.

Ultimately, the Court was satisfied that none of the plaintiff's claims raised a genuine issue requiring a trial and granted summary judgment in favour of the defendant.

## Key takeaway

The allegations contained in the plaintiff's claim are commonly raised in civil actions against public entities, including police forces. This decision, however, is a reminder that actions without an evidentiary foundation in support of the allegations in the claim can appropriately be dealt with by way of summary judgment.

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