Court of Appeal Confirms Limitation Period for Police Battery Claim Extended to Conclusion of Underlying Criminal Charge

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In the recently released decision of *Brown v. Woodstock (Police Services Board)*, 2018 ONCA 275 ("*Brown*"), the Court of Appeal allowed the plaintiff's appeal and set aside the lower court's dismissal of the action based on the expiry of the limitation period.

The plaintiff was arrested on February 13, 2013. He was subsequently charged with possession of crack cocaine, possession for the purposes of trafficking, possession of the proceeds of crime, and for resisting arrest. He entered into a peace bond on October 22, 2015 and the charges were withdrawn.

The civil action was commenced on May 13, 2016. The plaintiff sought damages for battery, illegal search, wrongful arrest and detention, and various breaches of the *Charter of Rights and Freedoms* ("Charter").

The defendants brought a motion to dismiss the action on the basis that it was statute-barred. The motion judge dismissed the claim on the basis that the limitation period for the claims for false arrest, false imprisonment and Charterbreaches crystallized on the date of the arrest and that those of battery ran from the date that the alleged battery occurred.

Following the filing of materials for the appeal, the Court of Appeal released its 2017 decision in *Winmill v. Woodstock (Police Services Board*), 2017 ONCA 962 ("*Winmill*"). The parties in *Brown* were permitted to file supplementary facts in light of the *Winmill* decision. In *Winmill*, the plaintiff was charged with assaulting an officer and resisting arrest. Following the withdrawal of the charges against him, the plaintiff commenced a civil action for negligent investigation and battery. The claim for battery was dismissed on the basis that it was outside the two year limitation period prescribed by the *Limitations Act, 2002*. On appeal, the Court of Appeal found that the claim for negligent investigation was "inextricably intertwined" with the claim for battery as it dealt with the same events and parties. Further, the Court held that the underlying charges and the tort claim of battery were "two sides of the same coin" or "mirror images". Finally, the Court found that the verdict in the criminal trial on the assault charge (against the police) was a determining factor in whether the plaintiff would proceed with

a civil action for battery. As a result, the discoverability date for the battery claim was the same as that of the negligent investigation claim.

The defendants in *Brown* attempted to distinguish their case from *Winmill.* However, a unanimous panel of the Court held that it did not matter that the charges in each case were different; that one case involved entering a peace bond as opposed to an acquittal; or that the plaintiff in *Brown* had not claimed in negligent investigation. The Court found that, as in *Winmill*, the battery action was a "mirror image" of the underlying criminal charges, and that the plaintiff could wait until the outcome of the criminal proceedings to sue.

Significance of the Decision

This decision appears to firmly crystallize the state of the law for the commencement of the running of the limitation period for an assault/battery civil claim against the police where there is an underlying criminal charge of assault police/resist arrest. It is now clear that the limitation period will not begin to run until the conclusion of a related criminal charge, contrary to the previous state of the law on this issue.

By

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