

Officers' lawsuit against attorney general unusual: O'Connor



A lawsuit launched by three senior Toronto police officers against Ontario's attorney general is highly unusual and contains allegations that will likely be onerous to prove in court, Toronto civil litigator [Sarah O'Connor](#) says.

"It's very difficult to prove the tort of misfeasance in public office against the Crown," she tells [AdvocateDaily.com](#).

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), explains that this tort in Canada essentially involves actions brought against public authorities, such as the Crown in this matter, that allege certain actions resulted in harm.

She is not involved and comments generally on the lawsuit that Sgt. Jamie Clark and Det. Sgts. Steven Watts and Donald Belanger filed June 22 in the Ontario Superior Court alleging negligence on the part of the Crown attorneys the officers worked with on a 2009 armed robbery case, reports the [Toronto Star](#).

"The Court of Appeal tossed the convictions against one of the accused and called the officers' behaviour akin to torture — comments that prompted an immediate defence from then police chief Bill Blair. The claims of abuse were found to be unsubstantiated by an investigation by Toronto police professional standards, findings that were upheld by an OPP probe of that internal investigation," says the article.

The officers' statement of claim asks for general damages of \$500,000 for negligence and misfeasance in public office, as well as aggravated, exemplary and punitive damages of \$250,000 for each of the three officers. It also asks for "a declaration that the officers did not assault Randy Maharaja or Neil Singh at the time they arrested them on or about June 11, 2009."

The officers allege in their statement of claim that had the Crown "conducted a reasonable and lawful prosecution, the findings that the officers were involved in 'torture' and 'beatings' of the two suspects, would never had been made either by Justice Thorburn of the Superior Court of Justice, or by Justice Blair writing for the Ontario Court of Appeal. Indeed they would have reached the exact same conclusion the SIU did, i.e. the allegations of assault by the officers was not substantiated by the actual evidence," it says.

They maintain that it was negligence on the Crown's part that resulted in "irreparable damage to the officers' livelihood and reputation," write the officers' lawyers in the statement of claim.

None of the allegations has been proven in court.

O'Connor says she is somewhat surprised by the lawsuit and says it could open police forces to the same types of lawsuits — based on the tort of misfeasance in public office — by people who are charged with crimes and are found not guilty at trial.

"They too could make similar claims about irreparable damage to their reputation," she says. "If you are charged and then found not guilty, you still have to pay your legal fees and there is often a great deal of damage to one's reputation, even though you have not been convicted. There is no compensation for those people. It's a high burden to prove there was negligence in the investigation."

It's a similar situation for witnesses who testify in court and may be subject to comments from a judge, counsel or police about their credibility, O'Connor says.

"There shouldn't be different standards for police," she says.

O'Connor says it appears as if the motivation behind the lawsuit is to get the officers' side of the story out into the public sphere.

She notes the officers' allegations about how the Crown ran its case are also surprising given that the Crown has prosecutorial discretion to run a case the way they see fit.

"Ultimately, I think this lawsuit will have a chilling effect on the relationship between the Crown and the police, and how they work together," she says.