

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Andriychuk v. Halifax Regional Municipality*, 2024 NSSM 35

Date: 20240508

Docket: 527565

Registry: Halifax

Mikhail Andriychuk

v.

Halifax Regional Municipality

Adjudicator: Darrell Pink

Heard: April 24, 2024, in Halifax, Nova Scotia
HRM Brief filed – May 7/24

Decision: May 8, 2024

Counsel: Claimant – Self-represented
William Hatfield – Counsel for the Defendant

By the Court:

The Facts

[1] A child's serious illness is one of a parent's worst nightmares. When that illness involves the child's mental health the anguish and sorrow are magnified.

[2] The Claimant's young adult daughter was ill, and the Claimant was her primary caregiver. He arranged his work and personal life to look after her. Though he travelled for employment, he always made sure she was safe at home.

[3] On October 18, 2021, the Claimant's daughter had what appeared to observers to be having a behavioural episode. Ms. Andriychuk was seen in a couple of yards in Dartmouth. She seemed to be impaired. Someone called the police who dispatched Cst. Sarah Robichaud to respond. The constable observed a young woman with a brown paper bag, who appeared to be drinking alcohol, was laughing and talking to herself.

[4] Cst. Robichaud engaged the young lady and described her as 'non-responsive' to her inquiries. Ms. Andriychuk had what the police officer called a 'thousand-mile stare' and based on her training the Officer concluded she was seeing a mental health disorder. She intended to use the powers given to her under the *Involuntary Psychiatric Treatment Act* to take her into custody intending to get her to a hospital. When the officer tried to stop Ms. Andriychuk, she struck her with her purse and ran to an adjacent street.

[5] Ms. Andriychuk ran to 69 Surrey Way, Dartmouth and entered the house there. The property was the home of the Claimant and his daughter.

[6] Given the circumstances and police protocols, Cst. Robichaud called for back-up. When other officers arrived, including a Sergeant, they determined that all doors into 69 Surrey Way were locked. Ms. Andriychuk did not respond to knocks on the doors. The officers, given the reported behaviour and the encounter with Cst. Robichaud formed the opinion that Ms. Andriychuk was a danger to herself or to anyone else who may be in the house with her. They did not know if she was alone, but the violent response to the encounter with Cst. Robichaud provided the basis for their belief.

[7] The Sergeant responsible for the operation authorized the officers to use force to enter the home. In doing so, the police damaged the entry to the home. It is the cost of repairing the door and entryway that constitutes the Claim (\$2700) in this matter.

[8] Ms. Andriychuk was dealt with by Emergency Health Services personnel and taken for medical care.

[9] The Claimant filed his Notice of Claim on October 18, 2023. He did so believing, based on information he had received, that he had two years to commence his action for damages.

[10] The period following the events of October 18, 2021, were extremely difficult for the Claimant. His daughter passed away. He continues to grieve her loss. He felt the conduct of the Halifax Regional Police was overly aggressive and he was offended that no offer of compensation was forthcoming for the damage they caused. He felt his daughter was treated as a criminal and not as a person needing medical attention. His views were aggravated by what he considered a bureaucratic and non-compassionate response from the Defendant when he asked for them to address the damages they caused to his property.

Issues

[11] The Claim raises two issues:

- a. Did the Claimant commence his claim within the period required by the Limitations of Actions Act?
- b. Is there a statutory or common law provision that exempts the Defendant from civil liability for damage caused by police in the circumstances of this case?

Limitations

[12] The *Limitations of Actions Act*, in s. 8, fixes a two-year limitation period for civil claims. A claim must be begun within two years of the date the Claimant learned of the cause of action or potential claim.

[13] A claim against the Halifax Regional Municipality, is not subject to the same provision as other civil claims but is governed by s. 376(1) of the Halifax

Municipality Charter¹. That provision requires a claim against the HRM to be commenced within twelve months of a claimant learning of the claim.

[14] Though the Claimant had a *bona fide* belief he had two years to begin his claim. He suggested that he had been given information by court staff about that. His subsequent loss of his daughter likely had a devastating effect on his own well-being and maybe his capacity to bring a claim. To adjust the commencement of the limitation period, evidence would be required.² The Claimant did not produce any to support a basis for the commencement of the limitation period to be any date other than October 18, 2021, the day of the incident when he returned home and discovered the damage.

[15] The Claimant's failure to begin the Claim within twelve months, absent any cogent evidence to adjust the commencement date, is fatal to his claim and it must be dismissed.

Behaviour of the Halifax Regional Police

[16] An issue addressed at the hearing was what authority do the police have to forcibly enter a private home? In doing so, if they cause damage are they exempted from liability for the damage they cause?

[17] Given this case is determined by the application of the *Limitations of Actions Act*, the Court need not rule on this. However, counsel for the city assisted the Court by providing the requisite authorities and it worth noting them.

[18] Powers of police under the *Involuntary Psychiatric Treatment Act* are extensive when apprehending and taking into custody an individual who the police have reasonable grounds to believe requires a medical examination. Section 14 provides that authority.³

¹ 376 (1) For the purpose of the *Limitation of Actions Act*, the limitation period for an action or proceeding against the Municipality, the Council, a Council member, an officer or employee of the Municipality or against any person acting under the authority of any of them, **is twelve months**. (emphasis added)

² See s. 12 *Limitations of Action Act*

³ 14 A peace officer may take a person into custody and take the person forthwith to a place for a medical examination by a physician if the peace officer has reasonable and probable grounds to believe that

- (a) the person apparently has a mental disorder;
- (b) the person will not consent to undergo medical examination;
- (c) it is not feasible in the circumstances to make application to a judge for an order for a medical examination pursuant to Section 13;

and

- (d) the person,

[19] The Act establishes no authority relating to entry into private property, especially a dwelling house. To do so usually requires a warrant issued under the Criminal Code. The entry by the police at Surrey Ave. was without a warrant. Under s. 8 of the *Charter of Rights*, a warrantless search creates a presumption of unreasonableness that the party asserting the propriety of the entry must rebut.⁴

[20] So the police must establish that a breach of a private residence is a reasonable use of force justified under the Code or at common law. In *R.v. Nasogaluak*, 2010 SCC 10, the Supreme Court of Canada noted that the use of police force is justified in exigent circumstances and noted at para 35:

Exigent circumstances, both under the common law and under the Charter, have always been held to constitute an exception to the ancient maxim ‘a man’s home is his castle.’

[21] It is the Criminal Code in s. 529.3(1)⁵ that authorizes a warrantless entry in exigent circumstances, which include the necessity to ‘prevent imminent bodily harm or death...’

[22] Though it is unfortunate the police needed to use force to enter the Claimant’s home, they were justified in doing so. The Code allowed them to act as they did given the information they had and their reasonable beliefs regarding the Claimant’s daughter’s situation.

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- (i) as a result of the mental disorder, is threatening or attempting to cause serious harm to himself or herself or has recently done so, has recently caused serious harm to himself or herself, is seriously harming or is threatening serious harm towards another person or has recently done so,
 - (ii) as a result of the mental disorder, is likely to suffer serious physical impairment or serious mental deterioration, or both, or
 - (iii) is committing or about to commit a criminal offence.

⁴ *R. v Travers*, 2001NSCA 71 at para 29 ff

⁵ **529.3 (1)** Without limiting or restricting any power a peace officer may have to enter a dwelling-house under this or any other Act or law, the peace officer may enter the dwelling-house for the purpose of arresting or apprehending a person, without a warrant referred to in section 529 or 529.1 authorizing the entry, if the peace officer has reasonable grounds to believe that the person is present in the dwelling-house, and the conditions for obtaining a warrant under section 529.1 exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.

Exigent circumstances

(2) For the purposes of subsection (1), exigent circumstances include circumstances in which the peace officer **(a)** has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person; or **(b)** has reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling-house and that entry into the dwelling-house is necessary to prevent the imminent loss or imminent destruction of the evidence.

[23] Given their conduct was appropriate, the damage that resulted from it is exempted from a claim under s. 81 of the *Involuntary Psychiatric Treatment Act* and s. 377(1) of the Halifax Regional Municipality Charter.⁶

Conclusion

[24] The Claim is dismissed.

Darrel Pink, Small Claims Court Adjudicator

⁶ Section 81 IPTA

81 No action lies or shall be instituted against any person who performs a duty, exercises a power or carries out a responsibility pursuant to this Act or the regulations for any loss or damage suffered by any person by reason of anything done in good faith, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person in the performance or supposed performance of that duty, the exercise or supposed exercise of that power or the carrying out or supposed carrying out of that responsibility.

Section 377 HRM Charter

377 (1) The Municipality or an inter-municipal corporation created pursuant to Section 74, and its officers and employees, are not liable for (a) failure to provide a service or the manner in which a service is provided, unless the Municipality or inter-municipal corporation fails to meet a standard of care to be determined having regard to financial, economic, personnel, social, political and other factors or constraints in the circumstances, including whether the service is a volunteer or partly volunteer service.