



The Supreme Court of Canada rules that police officers cannot sue Crown prosecutors for decisions they make about how to conduct a criminal case.

Three Toronto police officers arrested two individuals in connection with a complaint of armed robbery and forcible confinement. Prior to trial, one of the accused men filed an application to stay (stop) the proceedings against him and to exclude the evidence of a confession he made on the day of the arrest. This was based on his claim that the police beat him during the arrest and caused a serious rib injury. The Assistant Crown Attorney and a senior Crown Attorney agreed that the confession would not be admissible, and the charges against him were stayed. The other accused was convicted, but he filed a stay application alleging that the officers assaulted him during the arrest. The Assistant Crown Attorney did not call the officers to give evidence and conceded that the assaults occurred. The judge convicted him but reduced the sentence. Her reasons described the assaults in detail and described the officers' conduct as "police brutality". Those findings were reported in the media. The Toronto Police Service Professional Standards Unit then conducted its own review of the allegations of misconduct against the officers, concluding that the allegations could not be substantiated. The Court of Appeal entered a stay of proceedings. It strongly criticized the officers' conduct. Its findings were also reported in the media.

After the appeal, the officers filed a lawsuit against the Attorney General. They claimed to have suffered irreparable harm to their reputations and credibility as a result of the Crown attorneys' decisions not to call their evidence. This is the first time the Supreme Court has had a chance to consider whether the police can sue Crown prosecutors for the way they conduct a case.

The concept of "prosecutorial immunity" means Crown prosecutors generally cannot be sued for actions they take in performing their public duties. There is an exception for a person who is wrongfully and maliciously prosecuted.

The majority of the judges concluded that prosecutors do not owe legal duties to the police with respect to how they carry out a prosecution. Piercing the immunity of Crown prosecutors to make them accountable to police officers would put them in conflict with their duties of objectivity, independence and integrity in pursuit of ensuring a fair trial for the accused and maintaining public confidence in the administration of justice.

The need to safeguard and vindicate the rights of the accused, who is uniquely vulnerable to the misuse of prosecutorial power, is crucial. Allowing police officers to sue prosecutors for decisions they make in the course of criminal proceedings would create risks to the rights of the accused and to prosecutorial independence and objectivity, and would undermine the integrity of the criminal justice system. It would also be fundamentally incompatible with the mutually independent relationship between the police and the prosecutor. The police's role is to investigate crime; the Crown prosecutor's role is to assess whether a prosecution is in the public interest and, if so, to carry out that prosecution in accordance with the prosecutor's duties to the administration of justice and the accused.

Breakdown of the decision: *Majority:* Justice Rosalie Silberman [Abella](#) found that Crown prosecutors have immunity from claims brought by police officers for the conduct of prosecutors in the course of a criminal proceeding (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Brown](#), [Rowe](#), [Martin](#) and [Kasirer](#) agreed) | *Dissenting:* Justice Suzanne [Côté](#) found that prosecutorial immunity does not apply to claims for misfeasance in public office brought by police officers who suffered harm as a result of deliberate and unlawful conduct by prosecutors in connection with serious criminal allegations of police misconduct. ("Misfeasance in public office" happens when an individual holding a public office engages in deliberate and unlawful conduct in their capacity as a public officer, and is aware that their conduct is unlawful and likely to harm the plaintiff.)

More information: (case # 38687): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [trial](#) (Ontario Superior Court of Justice) | [motion](#) (Ontario Superior Court of Justice) | [appeal](#) (Court of Appeal for Ontario)
