



Emergencies Act Legal Strategies

Let's hold criminals accountable

February 9, 2024

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Invocation of the Emergencies Act Unlawful

On January 23, 2024, Justice Mosely ruled the invocation of the Emergencies Act, and he determined:

"It is declared that the decision to issue the Proclamation and the association Regulations and Order was unreasonable and ultra vires the Emergencies Act"

Below are excerpts from the decision regarding the reasons for the decision:

- [255] For these reasons, I conclude that there was no national emergency justifying the invocation of the Emergencies Act and the decision to do so was therefore unreasonable and ultra vires. Should I be found to have erred in that conclusion, I will proceed to discuss the threshold requirement that for a public order emergency to be declared it must meet the definition set out in section 16 of the Act.
- [359] Having found that the infringements of Charter sections 2(b) ((b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication) and 8 (unreasonable search and seizure) were not minimally impairing, I find that they were not justified under section 1 (of the Charter).

Legal Options

There are three legal options readily available:

1. Laying private criminal charges through laying a private information to a JP.

A private prosecution is a court process in which a person, who has reasonable grounds to believe that another person has committed a criminal offence, seeks to have the person charged and brought to court. This is a criminal court proceeding. The person who applies for charges to be laid is called the “informant”. The person you are trying to get charges laid against is called the “accused”.

2. Small Claims Court Under \$35K

- File a claim for property damage, personal injury
- Can include interest in the claim.

3. Claim over \$35K

- You can sue for larger amounts
- Can sue for punitive damages

Civil Action Pros/Cons

SMALL CLAIMS UNDER \$35K

- Quick and easy to file
- Don't need a lawyer/paralegal however you can retain one for consultation and represent yourself in court
- Cost is low, \$108 to file (you can apply for a waiver)
- Fast process, approx. 2 years
- Limit on defence motions
- Costs are capped at 15% of the total claim (plus disbursements)

SUPERIOR COURT OF JUSTICE OVER \$35K

- More complicated filing processes and more formal procedures
- Most likely will need legal consultation
- Costly as court costs are not capped
- Unlimited number of motions by the defence can be filed, each event can cost thousands to respond to
- Time consuming, could take years to complete
- If you lose, you may be ordered to pay the respondent's fees

Types of Claims

You can file a claim for any of the following issues:

- 1. Assault by police**
- 2. Property damaged by police**
- 3. Property was confiscated by police**
- 4. Bank account seized**
- 5. Property searched by police without cause/warrant**
- 6. Arrested and released without being charged**
- 7. Arrested and charged**
- 8. Stopped and questioned without probable cause**

Private Prosecution

What is Private Prosecution?

Pressing charges (swearing or laying an information) can be done by anyone in Canada, not just the police.

A private prosecution is a court process in which a person, who has reasonable grounds to believe that another person has committed a criminal offence, seeks to have the person charged and brought to court. This is a criminal court proceeding. The person who applies for charges to be laid is called the “informant”.

A person has the right to have criminal process issued from a Justice of the Peace by swearing an Information alleging reasonable and probable grounds that another person committed a criminal act.

The Crown Attorney’s Act directs that the Crown watch over private criminal prosecutions and where necessary, assume the conduct of the proceedings, to ensure that they are pursued in the interests of the administration of justice. The statutory right of a person to lay an Information and the right and duty of the Attorney General to supervise a criminal prosecution and to intervene and take over a private prosecution are fundamental parts of the criminal justice system.

Criminal Code for Private Prosecution

Criminal Code for Private Prosecution:

- Section 504:

Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

- (a) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person (i) is or is believed to be, or (ii) resides or is believed to reside, within the territorial jurisdiction of the justice;
- (b) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice; (c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or (d) that the person has in his possession stolen property within the territorial jurisdiction of the justice.

Crown Immunity

House of Commons Procedure and Practice, Chapter 3 Privileges and Immunities:

- Any incident of a criminal nature in which a Member has been charged is not a matter where immunity from arrest will protect that Member. Indeed, Members are not above the law. This is in accordance with the principle laid down by the British House of Commons in a conference with the House of Lords in 1641 where it was stated: “Privilege of Parliament is granted in regard of the service of the Commonwealth and is not to be used to the danger of the Commonwealth”. In its 1967 report, the British House of Commons Select Committee on Parliamentary Privilege noted that it could see no reason why, unless the circumstances are exceptional, a Member should be able to claim immunity from the normal process of the courts.
- The right to freedom from interference in the discharge of parliamentary duties does not apply to actions taken by Members outside of parliamentary proceedings which could lead to criminal charges. Matters of a criminal nature would include treason, felonies, breaches of the peace, breaches of provincial statutes (considered quasi-criminal) which involve the summary jurisdiction of the *Criminal Code*, forcible entries, kidnapping, printing and publishing seditious libel, and criminal contempt of court (though not civil contempt). A Member of the House of Commons is in exactly the same position as any other citizen if he or she is suspected of, charged with, or found guilty of a crime, provided that it is unrelated to a proceeding in Parliament.

You can sue the Prime Minister:

Canada (Prime Minister) v. Khadr:

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7842/index.do>

How to Steps: Private Prosecution

How to File Laying an Information

An **information** is a written document that sets out the criminal charge along with details of the alleged offence.

Step 1: Complete and submit a [private information application](#) to any Ontario Court of Justice courthouse by email, mail/courier or in-person. A JP will review to determine if the information warrants actions as per the criminal code.

The Crown Attorney's Office must receive a copy of the information, notice of the hearing and have the opportunity to attend. During the hearing, the Crown can call and cross examine witnesses and present relevant evidence at the hearing. The Crown is required by law to watch over private prosecutions.

Step 2: Is the hearing with the JP to hear the case, review the evidence and determine if this is enough to proceed with prosecution.

Step 3: The accused person will attend court by issuing a summons or a warrant starts a criminal prosecution.

- **Summons**

If the judge or justice of the peace issues a summons, the accused person will be served a copy of the summons that notifies them of the charge(s) and requires them to attend court.

- **Warrant**

If a warrant is issued, the accused person will be arrested by the police and brought to court before a judge or justice of the peace.

- **No summons or warrant:**

If the judge or justice of the peace decides not to issue a summons or warrant, the charges will be dismissed and there will be no criminal record against the accused person. This ends the proceedings.

Small Claims

Small Claims Under \$35K:

Jurisdiction of the incident (illegal invocation of the Emergencies Act) is Ontario, so you must file in Ontario.

The Small Claims court is a branch of the Ontario Superior Court and is a court of inherent jurisdiction.

- Quick and easy to file, can file online.
- Don't need a lawyer/paralegal however you can retain one for consultation and represent yourself in court.
- Cost is low, \$108 to file (you can apply for a waiver)
- Fast process, approx. 2 years to complete the proceedings.
- Limit on defence motions, keeping costs low.
- Costs are capped at 15% of the total claim (plus disbursements).
- Service:
 - Serve to their constituency office!
 - Go to an event where they will be
 - Hire a process server
 - Ask the court for alternative service

How to Steps: Small Claims

Steps to Start a Small Court Claim:

Step 1: Gather your evidence.

Step 2: Draft your statement of facts which will be used as your affidavit. Write this in first person, number each paragraph and include dates and facts.

Step 2: File in the Small Claims form 7A (link on the last slide).

Step 3: Get the affidavit sworn through a commissioner, notary or other legal professional.

Step 4: Submit the application online and pay the filing fee.

Step 5: Serve the defendant in person, through a process server or registered mail within 6 months.

Arguments Starting Point

Law for Building the Argument:

1. Invocation of EA ruled unlawful:

<https://theccf.ca/wp-content/uploads/EA-challenge-fed-court-reasons-FINAL.pdf>

2. Member of Executive Branch Liable for Punishment for Acting in Excess of Their Lawful Authority:

Roncarelli v. Duplessis, 1959, Supreme Court of Canada:

The proposition that in Canada a member of the executive branch of government does not make the law but merely carries it out or administers it requires no citation of authority to support it. Similarly, I do not find it necessary to cite from the wealth of authority supporting the principle that a public officer is responsible for acts done by him without legal justification. I content myself with quoting the well-known passage from Dicey's "Law of the Constitution", 9th ed., p. 193, where he says

... every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2751/index.do>

Arguments Starting Point Cont'd

3. R. v. Eldorado Nuclear Ltd.; R. v. Uranium Canada Ltd, 1983, Supreme Court of Canada:

When a Crown agent acts outside of Crown purposes, and not on behalf of the state, there is no immunity of the Crown agent:

“The conclusion that a Crown agent is personally responsible for an unlawful act still leaves the question whether an act is unlawful. Where the unlawfulness or the wrongfulness of the act arises without any recourse to a statute, the Crown’s immunity from a statute, as expressed in s. 16 of the Interpretations Act, is irrelevant. If, for example, the agent commits a tortious act, it is the common law which characterizes it as unlawful. There is no immunity that the agent can claim.”

“Where the only source of unlawfulness is a statute, however, the analysis is entirely different...the preliminary question...is whether that person is bound by that statute...”

“When the agent steps outside the ambit of Crown purposes, however, it acts personally, and not on behalf of the state, and cannot claim to be immune as an agent of the Crown. This follows from the fact that s.16 of the Interpretations Act works for the benefit of the state, not for the benefit of the agent personally.”

The Court adopted this approach in the CBC v. The Queen 1983

“For all purposes of this Act...” the corporation “was not acting for the purposes entrusted to it under the Act... when the Corporation exercises its powers with a view to carrying out the purposes ...it acts as agent of Her Majesty and only as agent of Her Majesty. But, when it exercises its powers in a manner inconsistent with the purposes of the Act, it steps outside its agency role.

“The position at common law is not that those under de jure control are entitled to Crown immunity, but rather that immunity extends to those acting on behalf of the Crown.”

“This Court’s decision in Formea Chemicals Ltd. v. Polymer Corporation Ltd., supra, is also instructive. The case concerned s. 19 of the Patent Act, R.S.C. 1952, c. 203....

Martland J., speaking for the Court, equated “Government of Canada” with the Crown.

<https://www.canlii.org/en/ca/scc/doc/1983/1983canlii34/1983canlii34.html>

Arguments Starting Point Cont'd

4. Peace officer civil liability:

Hudson v. Brantford Police Services, 2001, Court of Appeal Ontario;
S. 25(1) of the Criminal Code of Canada, which provides that a peace officer who is authorized by law to do something in the enforcement of the law is justified in doing what he or she is authorized to do if the officer "acts on reasonable grounds". In effect, s. 25(1) protects the officer from civil liability for reasonable mistakes of fact and authorizes the use of force. It does not protect against reasonable mistakes of law, such as mistake as to the authority to commit a trespass to effect an arrest.

<https://www.canlii.org/en/on/onca/doc/2001/2001canlii8594/2001canlii8594.html>

5. English Bill of Rights, Dispensing of Power:

Dispensing Power.

That the pretended Power of Suspending of Laws or the Execution of Laws by Regal Authority without Consent of Parliament is illegal.

<https://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction>

6. Breach of Public Trust

Section 122, Every official who, in connection with the duties of their office, commits fraud or a breach of trust, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person, is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years;

or

(b) an offence punishable on summary conviction.

7. False Pretence:

Section 361 (1) *A false pretence is a representation of a matter of fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.*

(2) *Exaggerated commendation or depreciation of the quality of anything is not a false pretence unless it is carried to such an extent that it amounts to a fraudulent misrepresentation of fact.*

(3) *For the purposes of subsection (2), it is a question of fact whether commendation or depreciation amounts to a fraudulent misrepresentation of fact.*

Relevant Links

1. Small claims example: <https://stand4thee.com/court-case-studies> (scroll down to the bottom of the page)
2. Small Claims Ontario: <https://www.ontario.ca/page/suing-someone-small-claims-court>
3. Small claims court forms: <https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>
4. Rules of Small Claims court: <https://www.ontario.ca/laws/regulation/980258>
5. Fee waiver: <https://www.ontario.ca/page/have-your-court-fees-waived>
6. CanLII database: <https://www.canlii.org/en/>
Guide for laying private prosecution:
<https://www.ontariocourts.ca/ocj/files/guides/guide-private-prosecution-EN.pdf>
7. File online: <http://tinyurl.com/2bv7wrm2>
8. MP immunity: https://www.ourcommons.ca/procedure/procedure-and-practice-3/ch_03_6-e.html
9. How to lay private prosecution: <https://www.ontario.ca/page/private-prosecutions>
10. Criminal notebook:
http://criminalnotebook.ca/index.php/Private_Prosecutions



Thank you!

For questions, comments or support please contact Stand4THEE.ca or Stand4THEE@gmail.com