

Suing the Crown in Ontario: Special Rules Apply

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By Gregory Richards

Any party planning to sue the provincial Crown in Ontario should carefully review the *Crown Liability and Proceedings Act, 2019*, [S.O. 2019, c. 7, Sched. 17](#) ("**CLPA**"). The Court of Appeal's recent decision in *Corrigan v. Ontario*, [2023 ONCA 39](#) ("**Corrigan**") shows the result of disregarding its provisions. Having failed to give prior notice of her claim, as the *CLPA* requires, the plaintiff's claim was struck as a nullity.

Background

The plaintiff in *Corrigan* was a former officer of the Ontario Provincial Police. She commenced an action naming the Crown as a defendant for what she characterized as constructive dismissal. The plaintiff did not comply with s. 18(1) of the *CLPA*. It states that no proceeding that includes a claim for damages may be brought against the Crown unless, at least 60 days before the commencement of the proceeding, the claimant serves on the Crown notice of the claim "containing sufficient particulars to identify the occasion out of which the claim arose".

Crown counsel wrote to the plaintiff drawing to her attention the statutory notice requirement. The Crown requested that she discontinue her action, pointing out that her action was a nullity pursuant to s. 18(6) of the *CLPA*. It offered to treat her claim as the required notice and suggested that she could start a new action 60 days after the discontinuance of the existing one.

Rather than following Crown counsel's suggestions, the plaintiff moved for default judgment. In response, the Crown brought a motion to strike her action.

Decision of the Motion Judge

The motion judge dismissed the plaintiff's request for default judgment for reasons that included the plaintiff's failure to comply with the notice requirement in the *CLPA*. But the motion judge also dismissed the Crown's motion to strike the claim as a nullity because, in his view, the Crown had delayed in bringing its motion. He gave the Crown 20 days to file a defence.

Court of Appeal Decision

The Court of Appeal in *Corrigan* rejected the motion judge's approach. It found that by introducing a notion of waiver by delay, the motion judge had effectively rewritten the legislation. His conclusion could not stand in the face of s. 18(6) of the *CLPA*, which states that failure to give notice of a claim as required renders the claim a nullity "from the time the proceeding is brought".

The Court noted that cases decided under predecessor legislation to the *CLPA* were to the same effect. Prior notice of 60 days was a prerequisite to bringing a claim for damages against the Crown, the notice period could not be abridged, and an action commenced without proper prior notice was a nullity. In the Court's view, the same approach should be followed under the *CLPA*, and that "s.

18(6) removes any doubt about this”.

The plaintiff made an estoppel argument, but it also was rejected. The plaintiff had brought an application to the Human Rights Tribunal of Ontario (“**HRTO**”) that was dismissed under s. 34(11) of the *Human Rights Code* because of her concurrent civil action. The plaintiff argued that because the Crown got the benefit of her civil action in having her HRTO application dismissed, it should be estopped from arguing that her civil action was a nullity. But the Court of Appeal was not satisfied that estoppel could affect the operation of the *CLPA* given s. 18(6) and held that, in any event, the plaintiff had not established a factual basis for estoppel.

The Court allowed the Crown’s appeal. It struck out the statement of claim and dismissed the plaintiff’s action against the Crown as a nullity.

Takeaway

The Crown in Ontario is a unique defendant. The *CLPA* significantly impacts the substantive law governing the liability of the Crown in a wide array of legal contexts including tort, property, legislative, regulatory, and policy matters. As *Corrigan* shows, the *CLPA* also has important procedural ramifications, including a requirement that the Crown be given advance notice of a claim for damages. In addition, the statute deals with a diverse range of other procedural matters such as service, leave to bring proceedings for misfeasance or bad faith, oral and documentary discovery, injunctions and specific performance, recovery of property, set-off and counterclaim, default judgment, and enforcement of judgments. No litigant should contemplate suing the Crown in Ontario without first thoroughly studying the provisions of the *CLPA*.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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