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Parallel criminal cases add complexity to civil lawsuits

By AdvocateDaily.com Staff



The existence of a criminal investigation should not stop injury victims from filing civil claims arising out of the same incidents, Toronto personal injury lawyer [Jasmine Daya](#) tells [AdvocateDaily.com](#).

"Regardless of whether there is a criminal proceeding or not, the same two-year limitation is in place for civil actions," explains Daya, managing principal with [Jasmine Daya & Co](#), who frequently handles civil cases with a criminal component running in parallel.

In a recent case, the Supreme Court of Canada [allowed](#) the appeal of two men, restoring their civil lawsuits against the police officers they alleged assaulted them during their arrests.

The claims were initially dismissed at an early stage after Superior Court judges ruled the limitation period had expired when they waited for the end of criminal proceedings before launching their actions.

Despite the plaintiffs' success at the nation's top court, Daya says it's safer and less arduous to file a claim as soon as possible after the events at issue. Among the more common instances of parallel proceedings are motor vehicle accidents where a driver was allegedly intoxicated, club assaults by fellow patrons or bouncers, and sexual assault cases.

Daya says counsel to both sides in the civil action will typically file pleadings with the court, and then hold off on examinations for discovery until the criminal matter runs its course.

"A criminal trial generates a great deal of information and evidence, and you want to get an understanding of all that before you go ahead with examinations in the civil case," she says. "You don't want to go through the examinations, only to learn more information at the trial that requires additional questioning to clarify."

In addition, she says the verdict in a criminal case can have a significant impact on the civil trial.

In the case of a conviction, Daya says it's reasonably certain that the defendant will be held liable in the civil trial.

Still, if the defendant is acquitted of a criminal charge, that doesn't necessarily quash a related civil claim, says Daya, who explains that the lower burden of proof in civil cases leaves room for a person to be found liable for injuries even if they were cleared at their initial trial.

"In a criminal trial, you have to prove the person is guilty beyond a reasonable doubt, but in a civil case, the standard is on a balance of probabilities, which means you have to show it was more likely than not," she says.

Criminal charges may boost the complexity of civil matters in other ways, adds Daya, who recently acted for the severely autistic plaintiff in a high-profile case involving an alleged assault by an educational assistant.

While her client sued the school board, and the educational assistant was criminally charged, the individual defendant's representation in the civil matter was dependent on the outcome of the criminal case because his union would only pay for a lawyer if he was found not guilty.

In the end, the defendant was convicted at trial of breaking the autistic student's leg, before facing further criminal charges.

"It's one of the more difficult and saddest cases I've ever dealt with," Daya says.

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