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What Lies Beneath: The Impact of Criminal Resolutions on Civil Proceedings Against Police

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Many incorrectly assume that the withdrawal of criminal charges always means that a civil action can be commenced against the officer(s) who laid the charge. This is not the case. According to the Court of Appeal for Ontario, the circumstances giving rise to the withdrawal may have a significant impact on whether a subsequent civil claim may proceed. In *Romanic v Johnson*, [2012] OJ No 2642 (SCJ); aff'd [2013] OJ No 229 (CA), the court provides a useful guideline on how the results of a criminal proceeding may impact a civil action against police.

In *Romanic*, the plaintiff was a police officer who ran a locksmith business on the side. His entrepreneurial spirit ran afoul of the law when he began to use police resources to promote the business. A criminal investigation ensued and resulted in a number of criminal charges against him. The criminal proceeding came to an end when the Crown agreed to withdraw the charges if Romanic resigned from his employment as a police officer. Romanic resigned. The Crown withdrew the charges on the basis that prosecution was no longer in the public interest.

With the criminal prosecution behind him, Romanic sued police for negligence and malicious prosecution, claiming, amongst other things, that the criminal charges had concluded in his favour. The police defendants brought a motion for summary judgment arguing the contrary: the criminal charges did not end in his favour. Both the motion judge and Court of Appeal agreed and the action was dismissed.

In reaching his conclusion, the motion judge undertook a cogent review of the various potential resolutions to criminal proceedings. He then considered their potential impact on the subsequent civil action. Generally, if charges are unilaterally withdrawn or stayed without a *quid pro quo* from the accused, the criminal proceeding has resolved in favour of the plaintiff and the civil action may proceed. By contrast, a plaintiff (such as Romanic) cannot pursue a claim against police when the charges are withdrawn as a result of a negotiated resolution. Examples

of negotiated resolutions include a withdrawal in exchange for the plaintiff/accused entering a peace bond, making restitution payments to either the alleged victim or a charity, or entering a guilty plea to a lesser or some other charge (i.e., a plea bargain).

Both courts in *Romanic*, however, were careful not to create neat categories of *quid pro quo* vs. non-*quid pro quo* cases. The analysis does not end with fitting a criminal resolution into one of these categories. As held by the Court of Appeal in *Ferri v Root*, [2007] OJ No 397 (CA), courts must undertake a contextual analysis of the underlying reasons for the resolution of criminal charges. If the Crown withdraws as part of a good faith negotiated resolution involving a *quid pro quo* from the accused, the disposition is unlikely to favour the plaintiff and an element of the torts of negligent investigation and malicious prosecution will not be made out. However, if the negotiated resolution is an attempt to avoid court scrutiny of police conduct or if the Crown abuses its position of strength in the process, the civil action will likely be permitted to continue notwithstanding the existence of a *quid pro quo*.

Romanic is a useful reminder for counsel in civil actions against police to give greater consideration to the parallel criminal proceeding. While the withdrawal of criminal charges may seem like a favourable resolution to a plaintiff, this will not always be the case. Why were charges withdrawn? Was there a meaningful sanction against the plaintiff? Was the settlement an attempt to avoid judicial scrutiny? Once counsel determines what lies beneath the resolution, they will be in a better position to assess the viability of the civil action.