

Citizens Given Power to Sue Public Officials

Supreme Court ruling unanimous, '97 police shooting at centre of case

Public officials can be sued for the harm they cause by deliberately failing to perform their legal duties, the Supreme Court of Canada has ruled, handing citizens broad new powers to hold people in public office accountable.

In its 9-0 ruling yesterday, the court resurrected a lawsuit filed by the family of Manish Odhavji, 22, who was shot in the back and killed by Toronto police in 1997 after he fled the scene of a bank robbery.

Odhavji's parents allege the two officers involved in the shooting and up to 20 officers who witnessed it deliberately sabotaged an investigation into the slaying by disobeying an order to remain segregated, failing to turn over their notes and refusing to speak promptly with investigators from the Special Investigations Unit.

Using the tort of "abuse of public office," the family can proceed with their \$8.5 million lawsuit against the officers for failing to co-operate with the SIU and against former police chief David Boothby for failing to ensure their co-operation with the civilian agency, the court said.

"Today, the rule of law has been affirmed," Julian Falconer, a lawyer representing the family, said yesterday.

"The Odhavji family's legacy in the wake of the loss of their son is that when citizens can't rely on their public representatives to do the right thing, these citizens can turn to the courts to hold them accountable," he told a news conference attended by Odhavji's parents, Barti and Pramod.

But the ramifications go beyond police and SIU and include all public office holders, Falconer added: "Increasingly, government has a role in virtually every aspect of industrial society, whether you're talking about tax auditors, or child and family service workers, environmental officials or Walkerton," he said. Advocates for the wrongly convicted say the ruling opens a new avenue for victims of miscarriages of justice to pursue damages against the crown and police.

"From the perspective of wrongfully convicted persons, the Supreme Court ruling breathes new life into this important tort and provides an additional basis for wrongfully convicted people to seek compensation from the courts," said Louis Sokolov, a lawyer representing the Association in Defence of the Wrongly Convicted, which intervened in the case.

Yesterday's ruling stems from an Ontario Court of Appeal decision three years ago.

In a 2-1 decision, the appeal court struck out much of the Odhavjis' lawsuit, saying the tort of "abuse of public office" could only be used to sue public officials for abusing powers they actually had - in essence, for going overboard, as opposed to failing to live up to a legally imposed duty.

Writing for the court, Mr. Justice Frank Iacobucci rejected that narrow definition yesterday, saying the tort clearly covers any unlawful conduct by public officials acting in bad faith. However, those who fail to carry out their duties through inadvertence or as a result of budgetary constraints would be immune, he added.

Iacobucci also imposed another important restriction on the power to sue for abuse of public office. An officer might not be liable for failing to comply with a legal obligation, such as co-operating with the SIU, if that duty conflicts with a constitutional right, such as the right to remain silent, he said.

"It is arguable that the statutory obligation to co-operate fully with members of the SIU cannot trump a police officer's constitutional right against self-incrimination," Iacobucci said.

In the Odhavji case, however, that possibility isn't enough to stop the family's lawsuit from going forward. Nobody has argued the SIU's requests to talk to the officers were inconsistent with their constitutional rights or that submitting inaccurate notes was necessary to protect their right against self-incrimination, he said.

It's about 15 to 20 officers who witnessed the incident and refused to say what happened, even though they were not implicated in any way, Falconer said. "It was done to protect their colleagues," he contended yesterday. The officers were staking out a CIBC branch at 2973 Islington Ave. on Sept. 26, 1997, in pursuit of a gang known as the Cherokee Bandits. Odhavji fled the scene unarmed, in a car. When it was stopped, he started to run and was shot dead. Barti Odhavji told reporters she is "not feeling good" despite yesterday's legal victory. "Every moment I remember him," she said of her son.

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