

Blaneys Lawyers Appear Before Supreme Court of Canada - Niagara Police at Penner

Date: February 03, 2012

Blaney's partner, [Eugene Mazzuca](#), recently acted as lead counsel at the Supreme Court of Canada in response to an appeal brought against the Niagara Police by Wayne Penner. Blaney associates, [Kerry Nash](#) and [Rafal Szymanski](#), were instrumental in assisting Eugene on the appeal and attended at the hearing of the appeal in Ottawa. Mr. Penner was represented by Julian Falconer. There were six interveners who made submissions on the appeal including the Attorney General of Ontario.

The issue on the appeal was whether the Ontario Court of Appeal was correct in exercising its discretion to apply issue estoppel to findings made in a police discipline hearing as a result of a public complaint so as to prohibit the public complainant from raising the same issues in his civil claim. In particular, the appellant, Wayne Penner ("Penner") had made a public complaint and almost simultaneously commenced a civil claim in which he alleged that he had been wrongfully arrested; subjected to excessive force during his arrest and later assaulted at the police station by Niagara Police officers. Penner's complaint went to a full hearing before retired OPP Superintendent Fitches (the "Hearing Officer") where multiple witnesses were called and cross-examined by Penner. The hearing lasted several days and included audiotape evidence relating to the arrest and videotape evidence from the police station taken at the time of the alleged assault. The Hearing Officer found no evidence to support any of the allegations made against the police officers. Penner appealed the Hearing Officer's decision to the Ontario Civilian Commission on Police Services ("OCCOPS"). An OCCOPS panel heard the appeal and set aside the Hearing Officer's decision in part. The police officers appealed the OCCOPS decision to the Divisional Court. The Divisional Court fully restored the Hearing Officer's decision. This decision was not appealed from by Penner.

Following the decision of the Divisional Court, Mr. Mazzuca brought a motion to strike the Plaintiff's claim as it related to the same issues raised in the public complaint on the basis of multiple common law doctrines including issue estoppel. He was successful in striking the bulk of the Plaintiff's claim at the motion before Mr. Justice Fedak. Penner appealed the decision of

Mr. Justice Fedak to the Ontario Court of Appeal. Mr. Mazzuca was successful in arguing that the doctrine of issue estoppel should apply to the bulk of Penner's claim before the Court of Appeal. Penner sought and was granted leave to appeal the Court of Appeal's decision to the Supreme Court of Canada.

The appeal was argued on January 11, 2012. The Supreme Court of Canada has reserved its decision.

View the [Niagara ats Penner webast here](#) (NOTE: [Microsoft Silverlight](#) must to installed to view.).

PEOPLE

- Eugene Mazzuca
- Kerry Nash
- Rafal Szymanski

PRACTICES

- Insurance Litigation
- Police Liability