

\*\* Unedited \*\*

Indexed as:

## **Pusey v. Toronto (Metropolitan) Police Services**

Between

Paul Pusey, Patrice Pusey, Sylvia Pusey, Milton Pusey, and  
Mark Pusey (plaintiffs/appellants) and Police Constable Roger  
Pecorella, Police Constable Darren Nebres, the Metropolitan  
Toronto Police Services Board et al (defendants/respondents)

[1998] O.J. No. 1749

Docket No. C22474

**Ontario Court of Appeal**

**Toronto, Ontario**

**McKinlay, Goudge JJ.A. and Southey J. (ad hoc)**

Heard: April 9, 1998.

Judgment: April 9, 1998.

(2 pp.)

[Ed. note: A Corrigendum was released by the Court May 28, 1998 and the correction has been made to the text.]

*Police — Actions against police — For false arrest — For assault — Practice — Judgments and orders — Summary judgments — To dismiss action.*

Appeal by the plaintiffs from a summary judgment dismissing their action. The plaintiffs sued the defendant police officers and the Board for assault, unlawful arrest and false imprisonment. The motions judge found that the claims fell within the protection of section 7(1) of the Public Authorities Protection Act.

**HELD:** Appeal allowed in part. The allegations of negligence against the Board fell within the protection of section 7. With respect to the other alleged acts, the truth of the allegations of malice and improper motive could only be determined at trial. Whether the Board was required to answer for any of the acts alleged against the officers had to be determined in light of the findings of fact at trial respecting the nature of those acts. These claims were to proceed to trial.

### **Statutes, Regulations and Rules Cited:**

Public Authorities Protection Act, s. 7, 7(1)

### **Counsel:**

Ted Charney, for the appellants.

Jane Egan, for the respondents.

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The following judgment was delivered by

¶ 1 **THE COURT** (endorsement):— The appellant plaintiffs plead unlawful assault, false arrest, and false imprisonment -- all done maliciously and for the unlawful purpose of injury to the plaintiffs, and also for the purpose of concealing unlawful conduct on the part of the respondent police officers.

¶ 2 With one exception, the motions judge, in our view, erred in dismissing the claims against the police officers and against the Metropolitan Toronto Police Services Board. The appellants argue that the alleged acts of the police do not fall within the protection of s. 7(1) of the Public Authorities Protection Act. Given the nature of the acts alleged, it is our view that that issue can only be determined at a trial after hearing evidence and determining the truth or otherwise of the allegations of malice and improper motive against the police.

¶ 3 With respect to the question of whether or not the Police Services Board must answer for any acts of the police officers, that should be determined in the light of findings of fact at trial respecting the nature of those acts

¶ 4 As far as the allegations of negligence against the Board set out in paragraph 17 of the statement of claim are concerned, the Board is protected against those claims by the provisions of s. 7 of the Public Authorities Protection Act.

¶ 5 The order of the motions judge is set aside except for claims in negligence against the Metropolitan Toronto Police Services Board. All other claims in the statement of claim are to proceed to trial.

McKINLAY J.A.  
GOUDGE J.A.  
SOUTHEY J. (ad hoc)

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