

KEEPING CURRENT

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Self-defence prevails in recreational hockey league stick-swinging incident

By Stephen Thiele

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Hockey is one of Canada's most popular sports. From a young age, many children are taught how to skate and are either registered in organized ice hockey leagues or play ice or street hockey with neighbourhood friends. Recreational ice and ball hockey leagues also exist for adults and sometimes adulthood friends merely get together to organize their own ice or ball hockey games. Most leagues prohibit non-incident body contact. However, on occasion, the intensity of the game results in aggressive behaviour on the part of either an individual player or multiple players, which leads to ugly incidents that result in the laying of criminal charges.

This was the result in [R. v. Tang, 2021 ABPC 292](#), where the court was required to determine if a hockey player who struck an opponent in the face with his hockey stick, causing serious injury, was guilty of assault causing bodily harm with a weapon or whether the player was innocent because he acted in self-defence. As noted by the court,

self-defence is a legal justification for committing an unlawful act: see [R. v. Ryan, 2013 SCC 3 at para. 24](#).

The incident at issue occurred in the second period of a recreational ice hockey game. The accused and the complainant played on different teams in a bottom-tiered men's division in the River Cree Hockey League.

The accused was 5'7" tall and weighed 140 pounds. The complainant was 6'5" tall and weighed 255 pounds.

Prior to the incident which resulted in the criminal charge being laid against the accused, the two players had been involved in body contact for which they received penalties. Then, in the second period, the two players encountered one another on a play in which the complainant alleged that the accused had speared him in the eye and in which the accused alleged that the complainant took a dive. On that play, a referee called a spearing penalty on the accused.

Thereafter, the complainant cross-checked the accused twice. The first cross-check was to the accused's torso. The second cross-check was to the accused's neck and head. These two cross-checks also drew a two-minute minor penalty, and a five-minute major penalty and game misconduct.

A referee testified that the complainant's aggression level was rising and that the accused was skating backward, retreating from the complainant. However, the complainant continued to skate toward the accused, when the accused wildly swung his stick and struck the complainant in the face. The accused's stick broke in the course of contact, and the complainant was left requiring emergency dental care as the blow loosened and chipped several teeth.

The accused testified that he was fearful of the complainant, that his response was instinctive and that he never intended to strike the complainant with his stick in the face or to inflict injury.

In assessing the accused's argument that he acted in self-defence, the court was required to first assess, based on [R. v. Tran, 2010 SCC 58 at para. 40](#), whether there was an air of reality to the plea. In making this assessment, all evidence and inferences favourable to the accused were assumed to be true: see [R. v. Cinous, 2002 SCC 29 at paras. 152-173](#). In the circumstances, an air of reality to the self-defence plea was established.

Since an accused is innocent until proven guilty, the Crown was accordingly required to prove beyond a reasonable doubt that the accused's plea of self-defence failed.

Self-defence, as codified in [s. 34 of the Criminal](#)

[Code](#), is comprised of three elements. The person must have a reasonable belief that they are facing a threat of force, that their response to the threat is to defend and protect themselves and not to seek vengeance, and that the response is reasonable.

To defeat the defence, the Crown was only required to negate one of these three elements: see [R. v. Poucette, 2021 ABCA 157 at para. 31](#). In the [Reasons for Decision](#), the court found that the Crown had not discharged its burden. The facts established that at the time the accused wildly swung his stick at the complainant, he had a subjective fear that he would be struck further by the complainant, with force, and that this fear was objectively reasonable.

The purpose of the accused's stick swinging was held to be for defensive purposes. The accused had testified that he was rattled at the time and that, in his view, he had to apply force to resist the application of potential force being applied against him again.

Under the contextual analysis that is required to assess the third element of the defence, the court found that the threat and use of force against the accused by the complainant appeared imminent, that the incident, as observed by a referee, happened in "a split second", that the complainant was an imposing figure when compared to the much smaller accused, that both players used their sticks against each other, that the accused was not the aggressor in the various incidents, and that the response was proportional.

The judge stated that the nature and proportionality of the accused's response was the crux of the case. Although the court was satisfied that the accused had used an appreciable degree of force in striking the



complainant and the consequences were serious, the force applied was simply not excessive beyond a reasonable doubt in the circumstances.

The accused was accordingly held not guilty.

This case demonstrates that participants in recreational sports are not above the law. Even though certain sports may have an inherent level of contact or aggression, a participant cannot engage in conduct that results in injury to an opponent. The criminal law can apply to such incidents and result in the laying of charges. However, a participant will be entitled to plead self-defence in the event they are charged for an incident that takes place in the sports arena. Whether such a defence will be successful depends on subjective and objective factors and the ability of the Crown to demonstrate beyond a reasonable doubt that at least one element of the self-defence defence can be defeated.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** at 416.865.6651 or by email at sthiele@grllp.com

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