



# Landmark Case

## NEGLIGENT INVESTIGATION, MALICIOUS PROSECUTION, AND RACIAL PROFILING:

### *HILL V. HAMILTON-WENTWORTH POLICE*

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## Hill v. Hamilton-Wentworth Police (2007) SCC 41

### Background

In late 1994 and early 1995, there were 10 robberies of banks, trust companies, and credit unions in Hamilton, Ontario. Based on the following pieces of evidence, Police charged Jason Ricardo Hill, an Aboriginal man, with committing the robberies:

- The police received a Crime Stoppers tip, which named Mr. Hill as the robber
- A police officer believed that he recognized Mr. Hill from the surveillance photo taken in one bank
- Mr. Hill was seen approaching and leaving one of the banks close to the time of the robbery
- Several witnesses identified Mr. Hill from a photo line-up
- Witnesses made statements that the robber was Aboriginal

During their investigation, the police released Mr. Hill's photo to the media and also asked witnesses to identify the robber from a photo line-up of 12 people. Of the 12 people in the photo line-up, Mr. Hill was the only Aboriginal person. The witnesses, who reported that the robber was Hispanic, picked out Mr. Hill from the photo line-up.

While Mr. Hill was in jail awaiting his trial, two other similar robberies took place in Hamilton. Additional tips were also given to the police, which named two Hispanic suspects, one of whom resembled Mr. Hill in physical appearance. Based on this new information, the police dropped all the robbery charges against Mr. Hill, except for the one where he was seen approaching and leaving the bank close to the time of the robbery. Trial proceeded because two bank tellers maintained their identification of Mr. Hill.

At the trial, Mr. Hill was convicted of robbery and sentenced to three years in prison. Mr. Hill appealed the decision and the appeal was heard after he had spent 318 days in prison. The Court of Appeal for Ontario ordered a new trial because of the problems with the identification evidence. At the second trial, the surveillance photo was digitally enhanced to show that the robber did not have any facial hair. Since Mr. Hill had a full goatee at the time of the robbery, he was acquitted of the crime. He had spent more than 20 months in prison.

## Civil Action

After being acquitted of the robbery charge, Mr. Hill took legal action against the Hamilton-Wentworth Police, alleging malicious prosecution, negligence in procedures relating to the photo line-up, and breach of the *Canadian Charter of Rights and Freedoms*.

Unlike *criminal law*, which consists of crimes against society or the general public, *civil law* is concerned with disputes between private individuals. In general, a **tort** is committed when one individual does not fulfill an obligation that is owed to another person. This results in a loss to the victim. A civil action can be brought against the wrongdoer in order to get compensation for the loss. Usually, if the victim's civil action is successful, money will be awarded as compensation. Civil actions do not result in jail time. In civil proceedings, the party bringing forward the action is known as the plaintiff, and the party being sued is known as the defendant.

### 1) Malicious Prosecution claim against the Hamilton-Wentworth Police:

Malicious prosecution falls under the area of tort law. **Malicious prosecution** is based on the deliberate and malicious use of a police officer's (or Crown Attorney's) position of authority. To prove malicious prosecution, there must be evidence of *wilful* and *intentional* effort by the police officer (or Crown) to abuse the proper role in the criminal justice system. In this case, Mr. Hill claimed that the Officers continued to press charges against him and continued the investigation, even though evidence existed that other people had committed the robberies.

There are four elements that are required to prove **malicious prosecution**:

- (a) The original prosecution must have been started or continued by the defendant in the current civil action.
- (b) The original proceeding must have been resolved in favour of the plaintiff. The plaintiff cannot have been found guilty of the original charge.
- (c) The original proceeding was not based on reasonable and probable grounds.
- (d) The defendant must have acted out of malice or for an improper purpose.

(a) The original prosecution must have been started or continued by the defendant in the current civil action.

- Element (a) is satisfied because the same officers in the malicious prosecution claim started the original prosecution against Mr. Hill (the plaintiff).

(b) The original proceeding must have been resolved in favour of the plaintiff. The plaintiff cannot have been found guilty of the original charge.

- Element (b) is satisfied because Mr. Hill was acquitted of the crime. Therefore, the original proceeding was resolved in his favour.

(c) The original proceeding was not based on reasonable and probable grounds.

- Element (c) is not satisfied in this case because the court found that the original charge against Mr. Hill was based on **reasonable and probable grounds**. To satisfy that there were

reasonable and probable grounds, the court must find that any ordinary and cautious person, who was placed in the position of the Officers, would have come to the conclusion that the person charged was probably guilty of the crime. The trial court found that the Officers conducting the investigation honestly and reasonably believed that Mr. Hill had committed the robbery, based on the pieces of evidence they had.

- (d) The defendant must have acted out of malice or for an improper purpose.
- Element (d) is not satisfied in this case. The court found that the Officers had not investigated for improper purposes.

Therefore, although Mr. Hill was **wrongfully convicted**, the court found that there was no malicious prosecution in the original investigation and that the Officers had acted in good faith by proceeding with the charge against Mr. Hill.

## **2) Negligence Claim:**

Mr. Hill also advanced a **negligence** claim against the Officers who conducted the investigation. The tort of negligence arises when a person is harmed by the actions of another individual, when that person acted below the standard of how a reasonable person in the same situation would have acted. In this case, Mr. Hill is claiming that the Officers were negligent in conducting their investigation and that their conduct fell below the standard of a reasonable officer. Mr. Hill claimed that the Officers' negligence caused him to spend over 20 months in prison and that he should be compensated for this time.

At the most basic level, there are four requirements that must be satisfied in order for a negligence claim to be successful. These requirements include:

- (a) A duty owed to the plaintiff. A **duty** is when a person is under a legal obligation to exercise care for another person.
- The trial court found that the Officers did owe a duty to Mr. Hill to conduct the investigations properly. They had a legal obligation to exercise care with respect to the interests of suspects while conducting their investigations.
- (b) A failure to conform to the **standard of care** required to carry out the duty. Once the court establishes that the duty is owed, it must decide what level of care is owed.
- In order for this requirement to be satisfied, there must be proof that the conduct of the Officers fell below the standard of conduct required of a reasonable officer in a similar situation. Mr. Hill argued that the Officers did not conform to the required standard for investigations because they only included Caucasians in the photo line-up. Mr. Hill argued that since he is a visible minority, he would be more likely to be identified by the witnesses viewing the photo line-up. He argued that a reasonable police officer would have included other visible minorities in the photo line-up. The trial court rejected Mr. Hill's argument and decided that the Officers met the reasonable standard of care by only including Caucasians in the line-up because all of the men resembled Mr. Hill in physical appearance. Furthermore, there are no mandatory rules for conducting police investigations. Therefore, the Officers did not violate any official rule by choosing only Caucasians for the photo line-

up, particularly because the other men matched Mr. Hill's physical characteristics. As the court found that the second requirement was not met, it dismissed the negligence action against the police and did not consider the third and fourth requirements for a negligence claim: a **proximate cause** and a **loss**.

(c) **Proximate cause** refers to the fact that the wrongdoer's failure to meet the standard of care must be the actual cause of the plaintiff's loss. The wrongdoer's actions must have *caused* the plaintiff's loss. Therefore, if the wrongdoer did not meet the standard of care, but the loss was caused by something other than the wrongdoer's actions, the negligence claim will be unsuccessful.

(d) The fourth element of a negligence claim refers to the fact that the plaintiff must have actually experienced some sort of **loss**. If the wrongdoer failed to live up to the standard of care that was owed, but no loss resulted from those actions, then no damages will be awarded.

### 3) Charter Claim

Mr. Hill also argued that during the investigation and detention, the Hamilton-Wentworth Police violated his right under sections 7, 9, and 11 of the *Canadian Charter of Rights and Freedoms*.

The trial court found that the Officers had not violated Mr. Hill's *Charter* rights and dismissed these claims.

## The Court of Appeal for Ontario

Mr. Hill appealed the decision to the Court of Appeal for Ontario. The Court of Appeal considered whether there exists a tort of **negligent investigation** in Canada, and whether the trial court ruled correctly by finding that there was no negligent investigation or malicious prosecution by the Hamilton-Wentworth Police.

The Court of Appeal found that the tort of negligent investigation *does* and *should* exist in Canada. The Officers argued that this tort would make police officers vulnerable to being charged with negligent investigation, and as a result they will not be able to conduct their work properly if they are always worried about a negligent investigation lawsuit. The Court rejected this argument and found that police officers do owe a duty to criminal suspects to take adequate care in all of their investigations and to respect the rights of the suspects. Police officers have a duty to investigate crimes seriously and **in good faith** and this duty does not interfere with the ability to perform their job.

Although the Court of Appeal affirmed the existence of a tort of negligent investigation in Canada, they did not find that the Hamilton-Wentworth Police Officers had committed this tort against Mr. Hill. Following the reasoning of the trial judge, the Court found that the Officers met the required standard of care that was owed to Mr. Hill throughout the investigation. The Court found that although the photo line-up in the investigation led to the wrongful conviction of Mr. Hill, it was not set up purposely, nor was it negligent. Like the trial court, the Court of Appeal found that the inclusion of Caucasians in the photo line-up did not create a bias against Mr. Hill because the other men in the line up physically resembled Mr. Hill.

The Court of Appeal agreed with the trial court decision to dismiss the malicious prosecution claim. It found that the circumstances surrounding the robberies, and the various pieces of evidence, justified the investigation and charges against Mr. Hill, and that they were not malicious in nature. Therefore, the Court dismissed Mr. Hill's appeal.

## The Supreme Court of Canada

Mr. Hill appealed the decision to the Supreme Court of Canada. The Supreme Court dismissed Mr. Hill's appeal and upheld the Court of Appeal's decision that the police had not negligently investigated or maliciously prosecuted Mr. Hill.

However, like the Court of Appeal, the Supreme Court of Canada agreed that police officers *do* owe a duty of care to suspects and that they can be responsible for damages resulting from a negligent investigation. The Court found that there is a **proximate relationship** (a close relationship) between police officers and suspects because any negligent action by an officer during an investigation is likely to cause damage to the suspect, either by wrongful investigation, detainment, or conviction. Therefore, police officers owe a duty to suspects to take care in their investigations and to avoid carelessness, which might result in harm to the suspect.

The Supreme Court of Canada also found that although police officers owe a general duty to suspects to take care in their investigations, they are not expected to conduct all investigations perfectly. This means that if an officer makes an error during an investigation, it will not automatically be a violation of the duty owed to suspects. Rather, officers are simply required to conduct their investigations *reasonably*. Officers are expected to meet the standard of care of any other reasonable officer in a similar situation. This flexible standard of care will ensure that police officers can conduct their work, without fear that if they make a mistake, they will be vulnerable to a negligent investigation lawsuit.

By applying the reasonable standard of care expected of the police officers to Mr. Hill's case, the Supreme Court of Canada found that the Hamilton-Wentworth Police acted reasonably throughout their investigation and did not violate their duty to Mr. Hill. The Supreme Court of Canada dismissed Mr. Hill's appeal.

## The Dissent

Three of the Supreme Court of Canada judges disagreed with the majority decision that there is a tort of negligence investigation in Canada. These judges found that the interests of the officers (to apprehend offenders) will always be diametrically opposed to the interests of the suspects. Therefore, there is no duty owed to suspects and there should not be a tort of negligent investigation in Canada.

## Result

Negligent investigation does exist but the Officers had not acted negligently toward Mr. Hill and he was not compensated for the time he spent in jail.



## Classroom Discussion Questions

1. What evidence did the Hamilton-Wentworth Police use to charge Mr. Hill? How much evidence do you think is needed before someone is charged? Do you think that the police had sufficient evidence in this case?
2. What were the three claims that the plaintiff brought against the defendants in the civil action? Were any of the claims successful?
3. In your own words, explain the difference between criminal law and civil law.
4. What is malicious prosecution? Give an example of possible *malicious* conduct by police officers or Crown Attorneys.
5. Do you think that a fear of being sued might affect how police officers carry out investigations and interfere with their duty to the public? Do you agree with the Supreme Court of Canada majority or the dissent position on the existence of a tort negligent investigation?
6. Do you believe that criminal suspects should have the right to bring claims against police officers for negligent investigation? Why or why not?
7. Should identification from a photo line-up be enough to convict a person of crime when there's no other evidence against the person? What about in cases like Hill where there was other evidence against him?
8. Do you think it was fair that Mr. Hill was the only Aboriginal person in the photo line-up? Do you think that photo line-ups should include only people of the same ethnic origin as the suspect? Can you answer these questions without seeing the photo line-up?
9. In this case, Mr. Hill was wrongfully convicted of committing a bank robbery. Do you believe that victims of wrongful conviction should automatically be compensated? If so, what type of compensation should they receive?



## *Mr. Hill v. Hamilton-Wentworth Police: Worksheet 1*

Using your textbook, the case summary, a legal dictionary, or other resources, define the following terms: They are in **bold** typeface in the case summary.

**Tort** \_\_\_\_\_  
\_\_\_\_\_

**Malicious Prosecution** \_\_\_\_\_  
\_\_\_\_\_

**Reasonable & Probable Grounds** \_\_\_\_\_  
\_\_\_\_\_

**Wrongful Conviction** \_\_\_\_\_  
\_\_\_\_\_

**Negligence** \_\_\_\_\_  
\_\_\_\_\_

**Duty** \_\_\_\_\_  
\_\_\_\_\_

**Standard of Care** \_\_\_\_\_  
\_\_\_\_\_

**Proximate Cause** \_\_\_\_\_  
\_\_\_\_\_

**Loss** \_\_\_\_\_  
\_\_\_\_\_

**Negligent Investigation** \_\_\_\_\_  
\_\_\_\_\_

**In Good Faith** \_\_\_\_\_  
\_\_\_\_\_

**Proximate relationship** \_\_\_\_\_  
\_\_\_\_\_



## *Hill v. Hamilton-Wentworth Police: Worksheet 2*

Read the following case summaries and determine if any or all of the elements of a *negligence claim* are present. Determine who would be the plaintiff and who would be the defendant in each case. The elements of a negligence claim are: 1) a duty; 2) a failure to meet the standard of care; 3) a proximate cause; and 4) a loss.

**Scenario One:** Karolina owns a residential home in the town of Pleasantville. In this town, homeowners are obligated to maintain the outside of their property so that it is safe for passersby. One winter, Pleasantville received a horrible snowstorm that left every surface covered in a thin sheet of ice and at least 25 centimetres of snow. The morning after the snowfall, Karolina shovelled all of the snow off her front steps and walkway. However, she had run out of salt to put on the ice and decided that she would buy it the next day to help melt the ice. That same day, Pleasantville's mailman, Sam, was walking up Karolina's walkway and slipped on the ice. Sam suffered a broken leg and fractured rib. Sam wants to sue Karolina for the tort of negligence. Are all the elements of a negligent claim present? Will Sam succeed in his negligence claim against Karolina?

**Scenario Two:** Ricardo went to his favourite restaurant, Sally's Pizzeria, for dinner. Ricardo liked this particular restaurant because the owner and chef, Sally, always made delicious and reliable food. Ricardo knew that Sally always cooked with high-quality, fresh ingredients. That night, Sally prepared Ricardo's favourite meal, a thin crust pizza with sausage, onions, pepperoni, peppers, and cheese. As always, Sally ensured that all of the ingredients were fresh and had been washed thoroughly before being added to the pizza. She also made sure that the meats on Ricardo's pizza were cooked thoroughly. Ricardo enjoyed every last bite of his favourite pizza and thanked Sally for the meal before he left. Later that night, Ricardo became very ill and experienced nausea and vomiting. When he visited his doctor the following day, he was told that he had a mild case of food poisoning. Ricardo wants to sue Sally for negligently preparing his meal. Will Ricardo succeed in his negligence claim against Sally?

**Scenario Three:** Aneela was in charge of her daughter's carpool on Tuesdays. Aneela drove her daughter, plus two other children to school, including their neighbour Inna's son, Felix. One Tuesday, Aneela was extremely tired from staying up all night working the night before, but she decided that she was still fine to carpool the children to school. While driving with the three children, Aneela dozed off and hit the car in front of her. The accident was very minor and none of the passengers in either car were injured. Aneela pulled over and safely parked on the side of the road to wait for the other parents to pick up their children. While Aneela and the kids were seated in their parked car, another driver, David, was driving down the street. David had spent most of the night at a local pub where he consumed a large amount of alcohol. David saw Aneela's parked car, but he could not react fast enough to change lanes and he hit Aneela's car. All of the passengers suffered minor injuries, except Inna's son, Felix, who suffered a broken arm. Inna wants to bring a negligence claim against Aneela, on behalf of Felix. She wants compensation from Aneela for Felix's broken arm. Will Inna's negligence claim against Aneela be successful?





## *Hill v. Hamilton-Wentworth Police: Worksheet 2 Answer Key*

**Scenario One:** Sam is the plaintiff. Karolina is the defendant.

Duty: As a homeowner in Pleasantville, Karolina had the legal obligation to keep her property safe for passersby. Since the mailman, Sam, frequently passed onto Karolina's property, Karolina owed Sam the duty of keeping her property safe.

A Failure to Meet the Standard of Care: After the snowstorm, the reasonable standard of care for keeping the property safe would be to shovel the snow from the walkways and to put salt on the walkways to melt the ice. Since Karolina only shovelled the snow and didn't salt the walkways, she failed to meet the standard of care owed to passersby.

Proximate Cause: Sam slipped on the ice because Karolina had not put salt on the walkway to melt it. Therefore, Karolina's actions of failing to ice the walkway directly caused Sam's injury.

Loss: Sam suffered a broken leg and a fractured rib from falling on the icy walkway. These injuries are considered a loss.

Conclusion: All four elements of a negligence claim are present and Sam would likely be successful in his negligence claim against Karolina.

Supplementary arguments: we do not know all the facts to this case. Maybe Sam slipped on the ice because he was running or because he was wearing summer running shoes. If that is the case, he cannot be completely successful in his negligence claim because he will have *contributed* to his injuries. Karolina should not be held entirely responsible for his injuries. In this type of situation where the plaintiff contributed to his or her demise, the court will share the responsibility by way of percentages, between the plaintiff and the defendant. So, if the court finds that Sam is entitled to \$400 in damages for his injuries, but that he has a 25% responsibility for his injuries (and therefore, Karolina is responsible for 75%), Karolina will only have to pay 75% of the \$400, that is to say, \$300.

**Scenario Two:** Ricardo is the plaintiff. Sally is the defendant.

Duty: As the owner and chef of the restaurant, Sally owed all of her customers, including Ricardo, a duty to ensure that they were served quality food.

A Failure to Meet the Standard of Care: Sally performed all of the necessary steps to ensure that Ricardo was served quality foods. She made sure all of the ingredients were fresh and that the food was cooked thoroughly. Therefore, Sally did all that she could to live up to her duty to serve quality food to her customers. Sally did not **fail** to meet the standard of care owed to Ricardo. Rather, Sally met the standard of care.

Proximate Cause: Ricardo's illness did not directly result from Sally's actions. Sally did everything she could do to ensure Ricardo received quality food. Therefore, Ricardo's illness from the food resulted from factors that were outside of Sally's control (for example, it could have been the farmer's fault, or it could have been impossible for anyone to know that the food would have

caused Ricardo to become ill). In this case, Sally's actions were not the proximate cause of Ricardo's injury.

Loss: Ricardo did suffer from food poisoning and this illness is considered a loss.

Conclusion: Since Sally lived up to the standard of care, Ricardo will not be successful in a negligence claim against Sally for causing his food poisoning.

**Scenario Three**: Inna is the plaintiff. Aneela is the defendant.

Duty: As the driver of the carpool, Aneela owed the children in the car a duty to drive safely.

A Failure to Meet the Standard of Care: A reasonable person who had stayed awake the entire night before the carpool and was "extremely tired" would not have driven the children to school. The reasonable standard of care in this circumstance is for the driver to be adequately alert when driving the carpool. Someone who stays awake all night is not sufficiently alert to drive children to school. Therefore, Aneela failed to meet the standard of care owed to the children.

Proximate Cause: Although Aneela failed to meet the standard of care, the accident that she caused **did not** cause Felix's injuries. Aneela's accident was minor and all of the children were safe in the car after the accident. Therefore, Aneela's actions were not a proximate cause Felix's injuries.

Loss: Felix suffered from a broken arm after the second accident caused by David and this is considered a loss. However, Felix had not suffered any injury after the first accident caused by Aneela.

Conclusion: Inna's negligence claim against Aneela for Felix's broken arm is unlikely to be successful because Felix's injuries were a result of David's actions, not Aneela's actions. Inna would probably be more successful if she advanced a negligence claim against David for causing Felix's broken arm.



## *Hill v. Hamilton-Wentworth Police: Worksheet 3*

A) Eyewitness identification is commonly used by police officers during investigations of criminal suspects. Eyewitness identification is when people who were present at the scene of the crime are asked to identify the person who they believe they saw committing the crime. Witnesses will either look at a series of photographs, or view a line-up of people, and will be asked by police officers whether any of the people match the person they observed at the crime scene. In the *Hill* case, several eyewitnesses wrongfully identified Mr. Hill as the person that they saw committing the bank robberies.

Consider the following facts on eyewitness identification:

- Eyewitness testimony often serves as compelling evidence in a criminal trial.
- Studies have shown that mistaken identity is common from eyewitness identification.
- Eyewitness identifications often prompt police officers to charge the suspect identified with committing the crime.
- Two reasons for mistaken identity include poor visibility at the time of the crime and faulty memory on the part of the eyewitness.
- Studies have shown that eyewitnesses who are asked to pick out the suspect from a photo-line up tend to choose a photo even if the criminal is not in the line up, or if the eyewitness is unsure.
- For most people, their facial recognition memory is better than their recall memory (For e.g., I can remember meeting you but I can't remember your name or what you were wearing.)
- It is not uncommon for eyewitnesses to choose a photo because it stands out from the other photos in terms of lighting, position of the suspect, or the colouring of the photo.
- Jurors tend to believe that eyewitness identification is the most persuasive evidence in helping them decide whether a person is guilty or not guilty.
- People are more likely to notice differences among members of their own race (or group that they are familiar with) rather than members of a different race (or group that they are unfamiliar with)

### Questions

1. Do you think that police should use photo line-ups in their investigations? Why or why not? What would some alternatives be?
2. What are three arguments for using photo line-up?
3. What are three arguments against using photo line-ups ?
4. What are some reasons why a witness might misidentify someone? What should happen if that person is wrongfully convicted?

5. How do you think technology has changed the eyewitness identification procedure over the last century?
  6. Do you think that police should have a set of rules that they must follow when conducting investigations? If yes, what kinds of rules do you think are important?
  7. If social science research shows that there are many problems with eyewitness identification from a photo line-up, why do you think they are still used? Do you think this should be changed? Why or why not?
- B) Research a case that involved the use of eyewitness identification in a testimony. Prepare a 1-2 page summary of the facts of the case and the implications of the eyewitness testimony. Be sure to include the result of the case.
- C) Prepare a presentation of the case from part B) and present the case to the class.

**Extension Activity:**

Complete the Eyewitness Identification module in OJEN's *Trial Fairness Resource*, available for free download from the *Resources* section of the OJEN website at [www.ojen.ca](http://www.ojen.ca).



## *Hill v. Hamilton-Wentworth Police: Worksheet 4*

It has been argued that Mr. Hill was targeted as a suspect for committing the bank robberies because he was Aboriginal, and that his wrongful conviction resulted from racial profiling during the police investigation.

The *Ontario Human Rights Commission* has defined racial profiling as:

“Any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion or place of origin (or a combination of these) rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.”

Write a one to two page personal reflection on racial profiling. Do you think that racial profiling is a major concern today? Do you believe that racial profiling played a role in the *Hill* case? Why or why not? What can be done to prevent racial profiling?