Can I Claim Damages for Personal Injuries Against Police Officers Using Excessive Force?

Disputes Spawning from the Occupy Movement
During the Occupy Movement, there have been reports of police officers using excessive force in dispersing public gatherings. It was reported that a pedestrian in Mongkok who appeared to be passer-by had been beaten by police for no apparent reasons. It is reported that some have commenced personal injury proceedings against the Police for personal injuries. Relevant legislation has provided that force can only be used by the police in defined circumstances; otherwise the police officer responsible and the Police Department may be open to personal injury claims in assault and battery.

Statutory Authority as Defence for Assault and Battery

Assault and Battery in General
Assault and battery were discussed in our November 2014 newsletter. The elements for a Plaintiff to prove against a police officer are the same as that against a lay person. In tort, where there is any direct and intentional use of force which directly and intentionally causes physical contacts with a person without his consent would constitute assault or battery. Hence a policeman who engages in force of any degree against a person may potentially attract civil liability unless he is protected by legal defences that he can avail of.

The Defence of Statutory Authority
In defence, police officers can claim acting under statutory authorities. Section 50(1)(a) of the Police Force Ordinance (Cap 232) provides that police officer can apprehend any person whom he reasonably believes will be charged with or whom he reasonably suspects of being guilty of any offence for which the sentence is fixed by law or for which a person may, on a first conviction of that offence, be sentenced to imprisonment. Furthermore, if arrests are forcibly resisted, police officer may use any means necessary to effect arrests under section 50(2) of the same Ordinance.

Not All Uses of Force are Lawful
Hence the defences are de-limited in law. An injured person may have a civil claim if: (1) any use of force not being based on “reasonable belief” or “reasonable suspicion” that an offence has been committed; or (2) if the injured person has not “forcibly resisted” arrest; or (3) the use of force exceeds necessity. Injured persons’ accounts of how force was applied is crucial for a meritorious claim.
(1) Reasonable Belief / Reasonable Suspicion

In the Court of Final Appeal case of HKSAR v Yeung May Wan (2005) 8 HKCFAR 137, it was held that subjectively and genuinely held suspicion that an injured person had committed an offence would not suffice. There must also be objective and reasonable grounds for the suspicion to be held, i.e. whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer, citing O’Hara v Chief Constable of the Royal Ulster Constabulary [1997] AC 286.

(2) Forcible Resistance

Even if there is reasonable suspicion of offences, force is justified under section 50(2) only if an injured person has forcibly resisted. If there is no evidence that the injured person has used any force to resist the arrest, the police may have no legal authority to use force in effecting the arrest.

(3) Necessity

Although section 50(2) gives police officers power to use “all means necessary” to effect arrests, the requirement of necessity means that forces applied must be objectively reasonable (R v Wong Hing Shan [1960] HKDCLR 145); otherwise such forces may be unlawful and injured persons would be entitled to personal injury claims.

Therefore, police acting in the course of crime control and peace keeping may still be open to tortious claims. If excessive and unnecessary force is used by the police during the course of mass activities such as rallies and demonstration, injured persons can claim in tort for pain, suffering and loss of amenities (PSLA), loss of income, loss of earning capacity and all ancillary medical expenses for treatment and rehabilitation as in any personal injury claims.

For enquiries, please contact our Insurance & Personal Injury Department:

E: insurance_pi@onc.hk  T: (852) 2810 1212
W: www.onc.hk  F: (852) 2804 6311
19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong

Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

Published by ONC Lawyers © 2015