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Toronto cop who shot Sammy Yatim wants case heard at Supreme Court of Canada

By **WENDY GILLIS** Crime Reporter

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The Toronto police officer convicted in the on-duty fatal shooting of [Sammy Yatim](#) is seeking leave to appeal to Canada's highest court.

Const. James Forcillo is currently serving a [six-year sentence](#) for the attempted murder of Yatim, the 18-year-old killed in a hail of Forcillo's bullets in a 2013 shooting that prompted nationwide outrage about police use of force.



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Const. James Forcillo is suspended without pay from the Toronto Police Service. (ANDREW FRANCIS WALLACE / TORONTO STAR FILE PHOTO)

After a high-profile trial, a jury [returned a rare verdict](#) finding Forcillo guilty of attempting to murder the man he killed — a conviction made possible by the Crown prosecutor’s decision to divide the officer’s two distinct volleys of bullets into separate criminal offences.

Earlier this year, Ontario’s Court of Appeal called the verdict “unusual, if not unique” but nonetheless [unanimously upheld the conviction](#).

Forcillo’s lawyers are now seeking leave to appeal to the Supreme Court of Canada, arguing in part that Crown prosecutors did not establish, beyond a reasonable doubt, that Forcillo’s volleys of bullets were entirely different incidences, and not just one continuous event.

“While the circumstances may be unique, Forcillo’s conviction raises fundamental questions about the necessary elements the Crown must prove in order to convict an accused of an attempt to commit an offence where there is no issue that the offence has been completed,” read arguments written by lawyers Michael Lacy, Joseph Wilkinson and Bryan Badali.

“The case at bar raises an interesting and important point of law.”

In attempting to have the case heard at Canada’s highest court, Forcillo faces an uphill battle. On average, about 11 per cent of the applications to have an appeal heard at the Supreme Court are granted; in 2016, just 50 of the 526 applications went ahead. Those applying to the Supreme Court of Canada must show the issue proposed in the appeal is of national importance.

Forcillo’s lawyers are also asking the Supreme Court of Canada to revisit the constitutionality of the mandatory minimum sentence for attempted murder involving a firearm. They have previously argued that Forcillo’s six-year sentence, one year above the mandatory minimum, was never intended to be applied to a police officer or anyone else armed by virtue of their employment.

Ontario’s Court of Appeal previously called that argument “faulty,” concluding that an officer’s obligation to carry a firearm “does not preclude their criminal misuse in excessive force scenarios.”

Yatim was killed while alone aboard a Dundas West streetcar on July 27, 2013, moments after exposing himself and wielding a small knife, sending a crush of passengers fleeing out the doors.

Forcillo, one of the first police officers on the scene, fired his gun at Yatim within 56 seconds of arriving. His first volley of three shots included the fatal shot to Yatim’s heart; 5.5 seconds later, he shot six more times, as Yatim lay on the ground paralyzed.

Following the trial, the jury found Forcillo not guilty of second-degree murder in relation to the first volley of shots but convicted him of attempted murder for the second volley.

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submitted to vary his bail conditions.

Forcillo, who is suspended without pay from the Toronto Police Service, is still facing professional misconduct charges under Ontario's Police Services Act. A conviction would likely result in serious consequences including dismissal.

The Crown now has 30 days to respond to Forcillo's lawyers' application. The Supreme Court generally reports back with a decision on the leave to appeal within three to six months.

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