

Hosel rockets: Time to drop the glove(s)? | Michael Cochrane

By **Michael Cochrane**

Law360 Canada (February 14, 2025, 11:16 AM EST) -- It had been a particularly hot and humid day for a round of golf, downright sticky and nothing was going right. This was not what I had imagined as I drove to the course that morning. Nor was it the breakthrough round I sensed was imminent as I warmed up on the range. No, after several holes too many bunkers had been excavated, my ball retriever was working overtime searching murky ponds and a sleeve of expensive new balls had disappeared after a mere one stroke each. And then there was the slow play. Our group was actively grouching about the delays. ("The front nine shouldn't take three hours. Where's the marshal?")



Michael Cochrane

The one drive I had finally managed to bunt down the centre of a fairway settled in a men's size-13 divot. I stood beside the large fresh sod pelt that had once been a happy part of the fairway and watched the group in front as they shared a range finder. Each user, having compared it with their watch or scorecard, was apparently questioning its accuracy. ("Is that 123 to the trap in front or to the pin? Can't be. Let me see that again. Nooo, it's 120.") Each careful calibration was then followed by a shank, a skulled worm burner or yet another massive chilli dip.

Eventually the group moved onto the green. My patience was wearing thin but I waited, breathing deeply, and contemplated my ball in the divot. But then I looked up to witness an intricate four-person fandango on the green in which each man straddled the line of his putt, waddled closer to the hole, then waddled back, repeatedly, only to then plumb it with a putter for good measure. This exercise was followed by what appeared to be four achingly slow three putts, each concluding putt being no more than four inches from the hole. No gimmes in this group.

As I say, my patience was being tested, but I was managing, still breathing deeply. That is until three golf balls rolled up at my feet. The group behind us, having lost their collective patience, had teed off.

In all my years of golf I had never been tempted to assault another golfer.

Until now.

Sure, I had seen the growing video catalogue of golfers pummelling each other on fairways and greens, swinging clubs like Vikings and unleashing vulgar verbal abuse. But those were other people, people who'd likely had too much alcohol and too much sun, people who didn't think of the consequences, the legal consequences, of what they were doing. As a lawyer I would be different.

So before I dropped the glove(s) and confronted the golfers walking toward me I thought of two things — one had to do with the criminal law and the other with civil law.

Let's look at the criminal law.

If you get into a fight with a fellow golfer there is the risk of being charged with either common assault or, if someone is wounded, maimed, disfigured or has their life endangered, aggravated assault.

Assault means intentionally applying force directly or indirectly to another person, attempting to do so or threatening to do so. A careful review of most of the videos of fighting on courses would lead you to conclude easily that, not only are the punches and kicks being thrown actually assaults but the verbal threats are as well. Those videos and transcripts would be Exhibit A in any prosecution.

If convicted the penalties vary. For common assault the Crown Attorney has a choice. He or she can proceed by way of summary conviction (in front of a judge in provincial court) or indictable offence (in front of a judge and in some cases a jury as well). The choice is dictated by the severity of the allegations and — ahem — whether this has happened before.

Maximum penalty? Common assault is two years less a day and/or a \$5,000 fine. However if the Crown elected to proceed summarily then the penalties can range from a discharge (no record) to suspended sentence, to a fine, to jail and probation, to jail and a fine — plus a criminal record. For an aggravated assault the penalty can reach up to 14 years imprisonment. Gulp.

I know what you're thinking — surely there are defences to these charges. I can hear you now — "But, but Your Honour, I was provoked. I'd had a few beers. And besides he/ she consented to the fight!"

Before we get to any possible defences let's not forget that you will not only not finish your 18 holes (and possibly never be allowed to tee it up there again) but you will have been arrested, charged and possibly required to attend for fingerprinting and a mug shot. Talk about ruining a round! That will all pale beside the feeling you have when your lawyer asks for a multi-thousand dollar retainer and explains that any trial will be over a year away — if you're lucky. But let's not go there.

Defences?

Provocation? Sorry. Someone yelling at you on a golf course, no matter how threatening or vulgar their behaviour is never going to be seen as a reason to assault them. You are entitled to give a dirty look or gesture but you should ignore the ball that rolls up at your feet, just walk away, retreat so to speak.

Intoxication? Again, sorry. Drinking too much may have lubricated your swing and lowered your inhibitions but it is not going to provide an excuse for assault. Why would a golf course be any different than a bar?

Self defence? A person does have a right in certain circumstances to respond to force or threats of force with force to protect themselves or another person. You can even rely on evidence from your friends and family about your good character. But it really needs to be crystal clear that you had no choice and that your response was morally acceptable. Pray that someone recorded you being attacked first and had no choice.

Consent? Can a person consent to being assaulted? Yes, but it is subjective and requires a close look at the immediate circumstances. For example hockey players who fight are consenting to the battle as a typical part of the game. No such understanding applies to golfers sharing a course. Both golfers would need to drop their respective gloves and agree to have a fight. But that is not how these incidents typically evolve on a course. Angry golfers do not observe the Marquess of Queensberry boxing rules. Usually someone has had enough and simply explodes, attacks another person, sometimes swinging a club and then that person retaliates. Others may join in for a good old-fashioned donnybrook. Who said anything about consent? Credibility will be a key factor. I wouldn't want to hang my hopes for an acquittal on testimony that my opponent and I had actually agreed to a fight on a golf course. This is especially so if someone was injured.

The criminal consequences alone should be deterrence enough, but if a brawl ensued and someone was injured it wouldn't be just the criminal law that I had to deal with. The second thing I thought about was the prospect that I could also be sued for damages for the torts of civil assault and battery. Another lawyer. Another retainer. Another long wait for trial.

So there I stood in the hot sun, frustrated and angry, as the golfers approached the golf balls at my feet. I thought about the criminal law. I thought about the civil law. The lawyers' fees. The possibility of a criminal record. The damages for their injuries. These things weighed on my mind but, more

important than any law, I realized the most important thing of all — there was no way I could take these three guys.

They looked at my ball deep in the divot and one said. "Tough break."

I turned to them with a thin smile. "You have no idea."

This is the third part of a series: Part one: Hosel rockets: Dispatches from the pettifogging lawyer. Part two: Hosel rockets: The case of nuisance and Benny the Cat.

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