Court of Appeal comments on a possible duty of care owed by the Attorney General of Canada

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In *Sienna v. Duckett*, 2025 ONCA 867, the Court of Appeal allowed the plaintiffs leave to amend their claim against the Attorney General of Canada relating to an alleged failure to properly administer regulatory oversight in issuing firearms licences under the *Firearms Act*.

Background

In 2019, Nikkolas Sienna called the police to report that he and his family were concerned about the erratic behaviour of their neighbour, Mark Duckett. Following a brief police investigation, Mr. Duckett shot and killed Mr. Sienna. Subsequently, Mr. Sienna, and members of his family, commenced a claim against the Attorney General of Canada, alleging that the Attorney General failed to properly administer regulatory oversight in issuing a firearms licence to Mr. Duckett. It was alleged that the Attorney General owned the plaintiffs a private law duty of care by virtue of its control over the issuance of firearms licences.

The Attorney General successfully brought a Rule 21.01(1)(b) motion for an order striking the claim against it in its entirety, without leave to amend, on the ground that it failed to disclose a reasonable cause of action. The motion judge found that the facts as pleaded could not support a relationship of proximity between the plaintiffs and the Attorney General to establish a duty of care.

The appellate decision

The plaintiffs appealed the motion judge's decision, arguing that there is a proximate relationship between the plaintiffs and the respondent which establishes a duty of care under two of the three categories of circumstances set out in *R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42*: (1) where the alleged private law duty of care arises explicitly or implicitly from the statutory scheme; (2) where there are specific interactions between the government and the plaintiff that create a relationship sufficient to establish the proximity required for a duty of care that is not negated by the statute; and (3) where

a combination of interactions and statutory duties establishes sufficient proximity to give rise to a private law duty of care.

The Court agreed with the motion judge that under the first category, a private law duty could not arise explicitly or implicitly from the legislation alone. The Court visited the language of the *Firearms Act* and found that there is nothing in the statutory language to support converting the Chief Firearms Officer's licensing and investigative powers, exercised in the public interest, into private law duties.

However, the Court found that a private law duty could arise under the third category set out in *Imperial Tobacco*. The Court found that the motion judge erred in narrowing the proximity inquiry between the plaintiffs and the respondent by limiting the analysis to whether the plaintiffs' pleadings alleged the respondent had any "personal interactions" or communications with the plaintiffs. The Court clarified that personal interaction is not always necessary to establish proximity.

The Court stated that this is not a case where it is plain and obvious that the plaintiffs could not plead a viable cause of action if they were granted leave to amend. If facts were pleaded to support that the respondent knew or ought to have known, when issuing the firearms licence, that Mr. Duckett posed a risk to Mr. Sienna or to a particularized group that included Mr. Sienna, that could create sufficient proximity to ground a duty of care, forming the basis of a reasonable cause of action.

Lastly, the Court considered the motion judge's policy analysis and clarified that the limited application of this case does not amount to a situation that would "effectively make Canada the insurer for victims of firearm related crimes committed by [licence] holders".

Commentary

This decision reiterates that statutory powers exercised in the public interest do not on their own give rise to private law duty of care. This confirms that acting pursuant to a legislative framework does not automatically result in liability for negligence when harm is caused by a third party. However, this decision is also a cautionary reminder that a motion to strike a duty of care claim for failing to disclose a reasonable cause of action may not succeed where the pleadings leave open a realistic possibility that a duty *could* arise on a more particularized evidentiary record.

By

Howard Cheung, Jonathan Thoburn

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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