Court affirms police do not owe victims of crime a private law duty of care

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The Ontario Superior Court of Justice recently released its decision in *Van Every v. Brantford City Police Services Board*, 2022 ONSC 7154, confirming that police do not owe a private law duty of care to victims of crime, absent a special relationship of proximity. The Court reiterated that claims that fail to plead the facts establishing a special relationship may be struck on that basis.

Background

The plaintiffs were the estates and close relatives of a Brantford couple murdered in their home on July 19, 2018, a month after their son had been arrested on drug charges and released on bail to their home. The Statement of Claim alleged that the killings were linked to the son's arrest, and that an hour before the couple were killed, three members of the public had called police to report a group of men circling suspiciously around the plaintiffs' neighbourhood in two vehicles, one of which was later determined to be stolen. The plaintiffs further alleged that the police were negligent in failing to dispatch officers within an appropriate time, arguing that this would have prevented the murders.

The defendant police services board brought a motion to strike the Statement of Claim in its entirety under Rule 21.01(1)(b), on the basis that it disclosed no reasonable cause of action. Notably, on a motion under that rule, no evidence is admissible and the factual allegations in the Statement of Claim are taken to be true.

The motion decision

The Court struck the plaintiffs' entire claim without leave to amend, finding that the facts as pleaded did not support the existence of a private law duty of care owed by the police to the deceased plaintiffs.

The Court affirmed that a legislative scheme aimed at public good, such as the *Police Services Act,* does not create a private law duty of care unless specifically provided in the statute itself. Rather, police services have only been found to owe a private law duty of care in two limited circumstances. The first, a duty is owed to suspects singled out for

investigation, *i.e.* negligent investigation claims, and second, to a narrow class of potential victims of a specific criminal threat.

In this case, the court held that while the police were alleged to have known of suspicious individuals circling the neighbourhood, there was no allegation that the callers had mentioned a specific threat toward the plaintiffs, or that the police were aware or ought to have been aware of such a threat from some other source. Accordingly, there was insufficient proximity between the police and the plaintiffs as victims of crime to create a private law duty of care owed by the police to the plaintiffs.

Commentary

This decision illustrates the unique circumstances that must exist for victims of crime to maintain a viable claim in negligence against a police service. The mere fact that the plaintiffs might be plausible targets of criminal retribution is not enough to give rise to a duty of care absent a specific threat known to the police.

For more information, please reach out to any of the key contacts listed below.

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