Federal Court of Appeal | Cour d'appel fédérale

Date: 20251201

Docket: A-58-25

Citation: 2025 FCA 215

CORAM: **DE MONTIGNY C.J.**
LASKIN J.A.
PAMEL J.A.

BETWEEN:

D.C., J.C., O.C., and Z.C.

Appellants

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Respondent

Heard at Edmonton, Alberta, on December 1, 2025.

Judgment delivered from the Bench at Edmonton, Alberta, on December 1, 2025.

REASONS FOR JUDGMENT OF THE COURT BY: LASKIN J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Edmonton, Alberta, on December 1, 2025).

LASKIN J.A.

[1] In this appeal, the appellants seek to set aside a decision of the Federal Court (2025 FC 226, Go J.). In that decision, the Federal Court granted summary judgement to the respondent under rule 215 of the *Federal Courts Rules*, S.O.R./98-106, finding that there was no genuine

issue for trial, on the ground that the Canadian Forces Military Police (MP) and Canadian Forces National Investigation Service (CFNIS) did not owe to the appellants a private law duty of care.

[2] According to the appellants' statement of claim, in 2015, C.C. attempted to set her residence, located on a Canadian Forces base, on fire and kill her minor children. The investigations conducted by the MP and CFNIS in the aftermath of the fire concluded there was insufficient evidence to identify a perpetrator or make a finding of arson. In 2019, following complaints by the appellant D.C., C.C.'s former spouse, about the adequacy of the investigation, the investigation was re-opened. The re-opened investigation made it clear that C.C. had been the perpetrator of the fire. She was subsequently arrested and convicted.

[3] The issue before the Federal Court was whether the MP and CFNIS could be held liable in negligence for their allegedly inadequate investigation, which significantly lengthened the minor children's exposure to C.C., and has resulted, it is alleged, in ongoing psychological trauma and medical expenses.

[4] In the law of negligence, there will be proximity that gives rise to a duty of care when the alleged tortfeasor (in this case, the MP and CNIS) is in a sufficiently "close and direct relationship" with the injured party that "it is just to impose a duty of care": *Cooper v Hobart*, 2001 SCC 79 ["Cooper"] at para. 42. The proximity analysis also considers whether there are any internal factors about proximity relevant to the relationship that would preclude the imposition of a duty of care. For example, if the conduct in question arises from a duty that the

party owes to the public generally, a duty to particular individuals will not ordinarily arise: *Cooper* at paras. 43-44.

[5] The appellants submit that they were owed a duty of care because the unique military context put the MP and CNFIS in a position of heightened responsibility, so that the circumstances constituted an "exceptional situation" that created a proximate relationship with the police. Accordingly, the appellants submit, there was a genuine issue for trial, and the Federal Court misapplied rule 215 in dismissing the action.

[6] We do not agree. The Federal Court considered the relevant factors in the duty of care analysis and properly granted summary judgment to the respondent under rule 215.

[7] It is firmly established in the case law that in conducting an investigation the police do not owe a private law duty of care to the victims of crime or members of their family. The role of the police is to protect the public as a whole, and it is to the public as a whole that their duties are owed. The Federal Court correctly pointed to some of the extensive case law to this effect, including *Goldman v. Weinberg*, 2019 ONCA 224; *Connelly v. Toronto (Police Services Board)*, 2018 ONCA 368 at paras. 6-7, *Wellington v. Ontario*, 2011 ONCA 274 at paras. 43-45; *Thompson v. Webber*, 2010 BCCA 308 at paras. 1, 27, leave to appeal refused 2010 CarswellBC 3523 (WL) (SCC); and *Jones v. The Attorney General of Canada (Royal Canadian Mounted Police) et al.*, 2018 NBCA 86 at para. 30.

[8] The appellants submit that the position is different when the police are military police acting in a military context. However, they have not explained why that is or should be so. They point to, among other things, a page on the MP website, which states that the MP "serve the entire CAF community, including…their family members": Appellants' Memorandum at para.20. However, the same could be said of other police forces: they too serve the entire communities within their mandates. The appellants have not explained how this statement or the other directives to which they made reference before us give rise to a relationship of proximity with particular individuals.

[9] The appellants also raise the exception recognized in *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police,* 74 OR (2d) 225, [1990] O.J. No. 1584, in which a proximate relationship was found between the police and certain victims of crime. But that exception is limited to cases where the plaintiff is identifiable as a member of a group facing a specific threat of harm at the hands of a third party which gives rise to a duty to warn the at-risk individuals.

[10] An action can only succeed on this basis if a failure to warn resulted in the at-risk harm materializing. This prerequisite is not met here. First, only O.C. and Z.C. were potentially at risk of physical harm as a result of the investigation; D.C. falls squarely outside the ambit of potential victims: *Thompson v. Webber* at para 27. Second, and more importantly, even if it were found that the minor appellants O.C. and Z.C. were identifiable as individuals at risk of physical harm, the particular type of harm at the hands of C.C. never materialized. Instead, the claim pleaded

here relates to psychological harm from the inadequate investigation itself: *Allen v New Westminster (City)*, 2017 BCSC 1329 at para. 26.

[11] Before this Court, the appellants placed emphasis on alleged systemic issues. But as the respondent points out, the appellants did not plead these issues in their statement of claim. Nor have they explained how the existence of these asserted systemic issues would have furthered the analysis of duty of care. In any event, the judge cannot be faulted for not addressing a submission that was not properly made.

[12] In the absence of a duty of care, the appellants' submission that the investigation constituted an operational, rather than a policy, decision—so that the MP could be found to have been negligent—must also fail. The Federal Court was correct to state (at para. 44 of her reasons) that merely labelling the MPs' conduct as operational does not help to determine whether a duty of care arose.

[13] We deeply sympathize with the appellants. But unfortunately, that does not provide a basis for the extension of the law that they seek.

[14] For these reasons, we will dismiss the appeal without costs.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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