

CANADA / JUDGMENT

Sienna v. Duckett

2025 ONCA 867

COURT

Court of Appeal for Ontario

DECIDED

15 December 2025

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Sienna v. Duckett

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COA-25-CV-0406

Judges

Copeland, Jill M.; Wilson, Darla A.; Pomerance, Renee M.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Sienna v. Duckett, 2025 ONCA 867

DATE: 20251215

DOCKET: COA-25-CV-0406

Copeland, Wilson and Pomerance JJ.A.

BETWEEN

Nikkolas Sienna, deceased, by his personal representative, Catherine Sienna, Catherine Sienna, personally, Louis Sienna, Alexandria Sienna, Mitchell Sienna, Ashlee Lyman, Tara Sciara, Adam Sienna and Jennifer Gibson

Plaintiffs (Appellants)

and

Mark Duckett, Annette Duckett, Paul Duckett, Hamilton Police Services Board, Adam Gilbert, John Doe Officer #1, John Doe Officer #2 and Royal Canadian Mounted Police and Attorney General of Canada*

Defendants (Respondent*)

Robert J. Hooper and Ryan A. Sullivan, for the appellants

Wendy Wright and Tengteng Gai, for the respondent

Heard: November 5, 2025

On appeal from the order of Justice John Krawchenko of the Superior Court of Justice, dated March 10, 2025.

Copeland J.A.:

- [1] On the evening of July 29, 2019, Nikkolas Sienna placed a 911 call reporting that he and his family were concerned about erratic behaviour of their neighbour, the respondent Mark Duckett. Police attended, investigated, and left. Several hours later, in the early morning hours of July 30, 2019, Mr. Duckett attended at the Sienna residence and shot and killed Mr. Sienna.
- [2] The appellants sued the respondent, the Attorney General of Canada, as well as the other named defendants. They allege that the respondent negligently failed to properly administer regulatory oversight in issuing firearms licences and owed them a private law duty of care by virtue of the respondent's control over the issuance of firearms licences.
- [3] Prior to filing a defence, the respondent brought a motion, pursuant to rule 21.01(1)(b) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, for an order striking the claim against it in whole or in part, on the ground that it failed to disclose a reasonable cause of action.
- [4] The motion judge granted the motion and struck the claim without leave to amend. He found that the claim did not disclose a reasonable cause of action. He found that a duty of care on the part of the respondent could not arise because the facts pleaded could not support a relationship of proximity between the appellants and the respondent. In the

alternative, he found that there were compelling policy reasons to negate a duty of care because finding a duty of care in relation to “any and all members of the public who were harmed by firearm related crimes committed by a holder of a [firearms possession and acquisition licence]” would “effectively make Canada the insurer for victims of firearm related crimes committed by [licence] holders”.

- [5] The appellants appeal the motion judge’s decision.
- [6] I would allow the appeal and vary the motion judge’s order to grant the appellants leave to amend the claim against the respondent. Although the motion judge was correct in finding that the claim as pleaded could not support a duty of care based on the relevant legislation alone explicitly or implicitly creating a duty of care, circumstances could be pleaded that would give rise to an arguable duty of care based on a combination of interactions between the parties and statutory duties. Leave to amend the claim should have been granted. Whether the appellants can ultimately establish a duty of care on the part of the respondent should be decided on an evidentiary record.

The pleading at issue

- [7] The relevant portions of the Amended Amended Statement of Claim read as follows:
12. The Defendant, Attorney General of Canada, in accordance with the Firearms Act, S.C. 1995, c. 39 and through its Canadian Firearms Program, oversees firearms licenses and registration, maintains national firearm safety training standards, assists law enforcement agencies and aims to enhance public safety.
- ...
24. The Plaintiffs state that the July 30, 2019 incident, and all of the damages as a result thereof, were caused and/or contributed to by the negligence and/or breach of the statutory duty of the Defendant, the Attorney General of Canada, and its employees, servants, agents and/or assigns, the particulars of which include without limitation as follows:
- a) They failed to investigate, adequately or at all, Mark’s application for a firearms license, including Mark’s relevant history;
 - b) They permitted Mark to hold a firearms license and possess a firearm when it was not in the interests of the Plaintiffs’ safety;
 - c) They failed to ensure that Mark successfully completed the Canadian Firearms Safety Course or any other safety course warranted under the circumstances;
 - d) They failed to enhance public safety; and
 - e) Such further and other acts or omissions constituting negligence as counsel may advise and may be discovered through Examinations for Discovery.

25. The Attorney General of Canada negligently failed to administer properly, or in any way, a regulatory oversight of the issuance of firearms licenses.
 26. The Attorney General of Canada breached its statutory duty to determine eligibility of the Defendant, Duckett, to hold a firearms license. In particular, the Attorney General of Canada failed to assess the application, or take any steps whatsoever to determine whether the following clauses of the Firearms Act, 1995 disentitled the Defendant, Mark Duckett, from possessing a license under said act:
 - a) s. 5(1) based on his own safety and the safety of others, and;
 - b) s. 5(2)(b) based on his significantly unstable mental health history including threats of violence, anti-social behaviour, and significant relevant diagnoses which the Defendant, Annette Duckett, would have been capable of confirming if she had been asked with proper due diligence as required by the Act.
 27. The Plaintiff specifically denies that the Defendant, Mark Duckett, completed his required firearms safety courses before applying for his license, which was granted by the Defendant Attorney General of Canada without verifying this requirement, or any others.
 28. The Defendant, the Attorney General of Canada, owes a private law duty of care to the Plaintiffs by virtue of its control over the issuance of licenses for possession of firearms, which it failed to administer with due diligence. Further, said defendant breached said duty of care by failing to investigate the application of the Defendant, Mark Duckett, to own a firearm.
 29. As a result of the failures to recognize the Defendant, Mark Duckett, was ineligible for a firearms license, the Defendant Attorney General of Canada issued him a license. Mark Duckett subsequently purchased a firearm using the license and murdered the Plaintiff with it.
1. Does the claim plead a reasonable cause of action against the Attorney General of Canada? a. The standard of review
 - [8] The standard of review on an appeal from an order striking a claim as disclosing no reasonable cause of action is correctness: *McCreight v. Canada (Attorney General)*, 2013 ONCA 483, 116 O.R. (3d) 429, at para. 38.
 - b. The applicable legal principles
 - [9] The law applicable to a motion to strike on the basis that a claim discloses no reasonable cause of action is not in dispute. The parties also agree regarding the principles applicable when a claim asserts a novel duty of care.
 - [10] A claim should only be struck on a motion under rule 21.01(1)(b), if it is plain and obvious there is no reasonable prospect it can succeed: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 17.

- [11] The court must assume that all facts pleaded in the statement of claim are true, unless they are patently ridiculous or incapable of proof: *Imperial Tobacco*, at para. 22; *McCreight*, at para. 29. The court must read the statement of claim as generously as possible, with a view to accommodating any inadequacies in the pleading: *Operation Dismantle v. The Queen*, [1985] 1 S.C.R. 441, at p. 451.
- [12] A claim should not be struck just because it has not yet been recognized, because the underlying law is unsettled, or because the plaintiff's odds of success seem slim. Rather, the court "must be generous and err on the side of permitting a novel but arguable claim to proceed to trial": *Imperial Tobacco*, at para. 21.
- [13] The duty of care analysis in a claim of negligence focuses on the relationship between the parties and asks whether the relationship is so close that one party might reasonably be said to owe a duty to take care not to injure the other party: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 4.
- [14] If the relationship does not fall within an established or analogous category of duty of care, the court must apply the two-part *Anns/Cooper* test to determine whether a novel duty of care can be recognized. The two-part test asks: (1) whether the parties are in a relationship of proximity in which the defendant's failure to take reasonable care might foreseeably cause harm to the plaintiff; and (2) if there is a *prima facie* duty of care, whether residual policy concerns outside the parties' relationship should negate it: *Nelson (City) v. Marchi*, 2021 SCC 41, [2021] 3 S.C.R. 55, at paras. 17-18; *Imperial Tobacco*, at para. 39; *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, [2007] 3 S.C.R. 129, at para. 20; *Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R. 537, at paras. 30-39.
- [15] Because the appellants' claim is against a government actor and said to arise from a statutory duty, the law regarding when a public law duty may give rise to a private law duty is also relevant. Generally, legislation or other types of regulation are enacted to further some public good – public health, public safety, fair markets, to name a few. The fact that government has chosen to act for the public good does not necessarily indicate an intention to create private law duties. Foreseeability alone is not sufficient to give rise to a duty of care. In the words of Chief Justice McLachlin in *Imperial Tobacco*, at para. 41: "Foreseeability must be grounded in a relationship of sufficient closeness, or proximity, to make it just and reasonable to impose an obligation on one party to take reasonable care not to injure the other."
- [16] The jurisprudence contemplates three categories of circumstances where sufficient proximity will exist that a public law duty may give rise to a private law duty of care on a government actor: (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: Imperial Tobacco, at paras. 43-47; Taylor v. Canada (Attorney General), 2012 ONCA 479, 111 O.R. (3d) 161, at paras. 75-87.

c. Proximity analysis

[17] The appellants rely on the first and third proximity categories discussed in Imperial Tobacco and Taylor.

[18] On the first category, the motion judge made no error in concluding that a private law duty could not arise explicitly or implicitly from the legislation alone.

[19] The appellants rely on two sections of the Firearms Act, S.C. 1995, c. 39, to ground their argument that a private law duty arises explicitly or implicitly from the legislation:

5 (1) A person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a crossbow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or a cartridge magazine.

(2) In determining whether a person is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge shall have regard to whether the person

...

(b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person;

...

55 (2) Without restricting the scope of the inquiries that may be made with respect to an application for a licence, a chief firearms officer may conduct an investigation of the applicant, which may consist of interviews with neighbours, community workers, social workers, individuals who work with or live with the applicant, spouse or common-law partner, former spouse or former common-law partner, dependants or whomever in the opinion of the chief firearms officer may provide information pertaining to whether the applicant is eligible under section 5 to hold a licence.

[20] In particular, the appellants focus on the language “that or any other person” in s. 5(1) and in the broad power in s. 55(2) to make inquiries regarding whether an applicant is eligible for a licence, including of neighbours.

[21] In my view, these provisions cannot reasonably be read as creating a private law duty. The provisions empower the Chief Firearms Officer in his public duty regarding licensing of individuals who wish to possess and use firearms. The language of the Firearms Act creates public duties in relation to the regulation of firearms. But there is nothing in the statutory

language to support converting the Chief Firearms Officer's licensing and investigative powers, to be exercised in the general public interest, into private law duties: *Imperial Tobacco*, at para. 50.

- [22] However, I am of the view that a private law duty could arise under the third category set out in *Imperial Tobacco*. It is important to bear in mind that at the stage of a pleadings motion, the issue is not whether the duty of care should be recognized, but whether it could be – in other words, whether it can be said that the claim has no reasonable prospect of success.
- [23] A private law duty may arise from the combination of statutory public law duties and interactions that affect the plaintiff where the pleaded facts allege a relationship between the government actor and the plaintiff that is distinct and more particularized than the public at large affected by the public duties created by the legislation.
- [24] In the context of government actors, the concern is for the creation of a link between the plaintiff and the defendant such that the private law duty imposed on government arising out of a public law choice to legislate in the public interest is not unduly broad. There must be something about the individual or group captured by the proposed duty of care that is more specific, more tailored, than all members of the public captured by the public purpose of the legislation: *Vlanich v. Typhair*, 2016 ONCA 517, 131 O.R. (3d) 353, at para. 39.
- [25] In *Taylor*, at para. 80, this court described the types of cases where courts have found a *prima facie* duty of care involving a government actor as ones where “the facts demonstrate a relationship and connection between the regulator and the individual that is distinct from and more direct than the relationship between the regulator and that part of the public affected by the regulator’s work” (emphasis added; see also para. 104).
- [26] Two cases are helpful in illustrating the type of more specific relationship that could be pleaded, and more particularized group said to be owed a private law duty, by a government actor acting under legislation that regulates in the public interest.
- [27] In *Fallowka v. Pinkerton’s of Canada Ltd.*, 2010 SCC 5, [2010] 1 S.C.R. 132, at paras. 43-55, the Supreme Court upheld the finding at trial that the territorial government, acting pursuant to legislation regulating mining safety, owed a duty of care to miners in a particular mine where there were ongoing issues of violence arising out of a strike that ultimately led to a bomb being planted and exploding at the mine. The court focused on three aspects of the relationship between the regulator and the miners that created a relationship of sufficient proximity to give rise to a private law duty of care. First, the group to whom the duty was owed – miners at the specific mine with an ongoing labour dispute – was small and clearly defined, rather than the public at large. Second, the government inspectors had direct contact that affected the miners in the sense that the inspectors were at the mine during the strike “almost daily”. Third, the inspectors’ statutory duties related directly to the conduct of the miners themselves. These factors led the Supreme Court to accept that there was a relationship of sufficient proximity between the injured miners and the government defendant based on the “close and direct” effect of the inspectors’ actions on the miners: at

para. 55.

- [28] In *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1990), 74 O.R. (2d) 225 (Div. Ct.), leave to appeal refused, (1991) 1 O.R. (3d) 416 (Ont. C.A.), the Divisional Court upheld a motion judge's decision that the plaintiff could sue the police in negligence for failing to warn her that she was at risk from a serial rapist in her neighbourhood. The court accepted that the plaintiff had pleaded facts that could establish sufficient proximity to create a private law duty of care on the police. Important aspects of the pleadings that led to this conclusion included that the police knew of the existence of a serial rapist, and that by the time the plaintiff was attacked, they knew the women targeted by the perpetrator were a limited group, identifiable by a number of characteristics including the specific neighbourhood where the attacks occurred, that the victims all resided in second or third floor apartments, that entry was gained by a balcony door, and that the victims were all white, single, and female. The facts alleged in the claim provided a basis for the allegation that the police knew or ought to have known the plaintiff was part of a "narrow and distinct group of potential victims": at p. 230.
- [29] It is important to bear in mind that reference in *Imperial Tobacco* to interactions between the plaintiff and the defendant on which a duty of care is argued to be based is not limited to personal interactions between the plaintiff and the defendant. Rather, the concern is with "whether the actions of the alleged wrongdoer have a close or direct effect on the victim, such that the wrongdoer ought to have had the victim in mind as a person potentially harmed": Hill, at para. 29 (emphasis in original). The motion judge noted, in his description of allegations that were absent from the pleading, that it did not allege that the respondent had any "personal interactions" or communications with the appellants. Respectfully, this erroneously narrowed the proximity inquiry. What is required is actions of the defendant that have a close or direct effect on the victim. Sometimes these will be personal interactions, but not always.
- [30] Turning back to the claim pleaded in this case, I agree with the motion judge's conclusion that the appellants' claim as currently pleaded does not disclose a reasonable cause of action under the third category from *Imperial Tobacco* and *Taylor*. However, this is not a case where it is plain and obvious that the appellants 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, at the time it issued Mr. Duckett a firearms licence, that he posed a risk to Mr. Sienna or to a particularized group that included Mr. Sienna, as distinct from the more general risk posed to the public at large if someone who is not eligible for a firearms licence is issued a licence, that could form the basis of a reasonable cause of action. On this basis, leave to amend should have been granted. I discuss leave to amend further below. But at this stage, I focus on what is missing from the claim as pleaded.

- [31] The claim as pleaded, read generously as required, alleges that Mr. Duckett was not eligible to hold a firearms licence and that the respondent knew or ought to have known that he was not eligible. This is clear from paragraphs 24(b) and (c), 26, 27, and 29, particularly when read in combination with s. 5(1) of the Firearms Act. Although the motion judge's reasons are not entirely clear on this issue, to the extent they can be read as saying that the claim does not allege these elements, this is an error.
- [32] What the claim lacks is the element that the respondent (through the Chief Firearms Officer) knew or ought to have known, at the time it issued Mr. Duckett a firearms licence, that he posed a risk to Mr. Sienna or to a particularized group of individuals which included Mr. Sienna, as distinct from the risk to the public at large if a person who does not meet the criteria for a firearms licence is issued a licence.
- [33] A pleading which alleged facts to support such an element would create sufficient proximity between the respondent and the appellants to be capable of grounding a duty of care. In the words of Fullowka, it would be a claim that the actions of the respondent had a "close and direct" effect on the appellants. In the words of Jane Doe, it would be a claim that the respondent knew or ought to have known that issuing a firearms licence to Mr. Duckett would create risk to a "narrow and distinct group of potential victims", including Mr. Sienna.
- [34] I want to be clear that I would not accept that a claim based only on the fact that a shooter was not legally eligible for a firearms licence but was issued one by the Chief Firearms Officer could create sufficient proximity to ground a duty of care. There is no question that issuing a licence to an ineligible person creates foreseeable risk to the public. However, to accept the proposition that the Chief Firearms Officer owes a duty of care any time a person who was wrongly issued a licence harms a member of the public would be to turn the public duty on the Chief Firearms Officer not to issue firearms licences to individuals who do not meet the eligibility criteria under the Firearms Act into a private law duty in all cases. Rather, what is required is the pleading of facts to support that the Chief Firearms Officer knew or ought to have known, at the time he issued the firearms licence to Mr. Duckett, that he posed a risk to Mr. Sienna or to a particularized group which included Mr. Sienna.
- [35] Before leaving this issue, I make three comments about the scope of the duty. First, because this court is considering the issue at the stage of a motion to strike, we are not finding that a duty of care exists, but rather, that one could exist, and that it should be determined on an evidentiary record. As the Supreme Court recognized in *Imperial Tobacco*, at para. 47, while it may be straightforward at the stage of a pleadings motion to rule out a proposed duty where the claim of proximity is based solely on legislation, it may be difficult to rule out a claim where proximity is alleged on the basis of specific conduct and interactions. In the words of Chief Justice McLachlin:

So long as there is a reasonable prospect that the asserted interactions could, if true, result in a finding of sufficient proximity, and the statute does not exclude that possibility, the matter must be allowed to proceed to trial, subject to any policy considerations that may negate the prima facie duty of care at the second stage of the analysis.

- [36] Second, it is not appropriate at this stage for this court to define the more particularized group to which it could be open to find a duty of care is owed by the respondent. As discussed below, I would grant the appellants leave to amend their claim. It is for the appellants to plead facts to bring their claim within the scope of cases such as *Taylor*, *Fullock*, and *Jane Doe*, such that they provide a basis to argue that, at the time the respondent issued Mr. Duckett a firearms licence, it knew or ought to have known that Mr. Duckett posed a risk to Mr. Sienna or to a particularized group of individuals which included Mr. Sienna.
- [37] Third, the difficulty posed by imbalance of information about what was known to the respondent when it is alleged a firearms licence was issued to Mr. Duckett will be relevant to assessing the sufficiency of the pleading if and when the appellants further amend the claim. As was discussed in submissions at the hearing, it is reasonable to assume that the respondent has a file in relation to Mr. Duckett's firearms licence application which contains details about what information the respondent did and did not possess at the time the licence was issued. The appellants have no means of accessing that file at this stage of the proceedings.
- [38] In *Imperial Tobacco*, at para. 22, Chief Justice McLachlin recognized that a "claimant may not be in a position to prove the facts pleaded at the time of the motion [to strike]. It may only hope to be able to prove them. But plead them it must." Recently, in *Rivard v. Ontario*, 2025 ONCA 100, at paras. 51-53, this court recognized that, in a situation where some details about the factual circumstances relevant to a claim are in "the unique possession and control of the defendants", that fact will be taken into account in assessing the level of detail a plaintiff will be required to provide in their pleading.

d. Policy analysis

- [39] The motion judge found, in the alternative, under the second branch of the *Anns/Cooper* analysis, that there were residual policy reasons not to find a duty of care on the part of the respondent. The motion judge's conclusion in this regard was based on conceptualizing the proposed duty of care as capturing "all members of the public who were harmed by firearm related crimes committed by the holder of a [firearm possession and acquisition licence]", which would "effectively make Canada the insurer for victims of firearm related crimes committed by [licence] holders".
- [40] The proposed duty of care which I find could form the basis of a reasonable cause of action is more limited. While the broad duty of care posited by the motion judge in his policy analysis may well give rise to the policy concerns he relied on, a narrower duty pleaded to be owed to a particularized group that includes Mr. Sienna does not. When the duty of care

is conceptualized as extending only to a particularized group who it is argued the respondent knew or ought to have known was at risk from Mr. Duckett at the time he was issued a firearms licence, as opposed to all members of the public, it does not raise the policy concern of creating wide-ranging potential liability on the part of government to all members of the public based on the decision to legislate in the public interest.

2. Should leave to amend have been granted? [41] Leave to amend should be denied only in the clearest of cases, when it is plain and obvious that no tenable cause of action is possible on the facts alleged: *Conway v. The Law Society of Upper Canada*, 2016 ONCA 72, 395 D.L.R. (4th) 100, at para. 16. However, whether to grant or deny leave to amend is a discretionary decision. An appellate court should interfere with such a decision only if the motion judge erred in principle or exercised his discretion unreasonably: *Mortazavi v. University of Toronto*, 2013 ONCA 655, at para. 3, leave to appeal refused, [2014] S.C.C.A. No. 190.

[42] The motion judge did not engage in any analysis of whether leave to amend the claim ought to have been granted. Rather, he simply stated in his conclusion that the claim was struck “without leave to amend.” In the absence of any explanation why leave to amend was not granted, the decision to deny leave to amend is not entitled to deference.

[43] In light of my conclusion that a claim could be pleaded disclosing a reasonable cause of action against the respondent, leave to amend should have been granted. The appellants should be given the opportunity to amend the claim. Nothing in the record suggests any prejudice to the respondent if leave to amend is granted.

3. Disposition [44] I would allow the appeal and vary paragraph 1 of the motion judge’s order to read as follows:

THIS COURT ORDERS that the allegations as against the Defendant, Attorney General of Canada, in the Amended Amended Statement of Claim are struck, with leave to amend.

[45] The appellants are entitled to costs of the appeal in the agreed amount of \$7,500, inclusive of disbursements and applicable taxes.

Released: December 15, 2025 “J.M.C.”

“J. Copeland J.A.”

“I agree. D.A. Wilson J.A.”

“I agree. R. Pomerance J.A.”

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