Federal Court Cour fédérale

Date: 20250203

Docket: T-573-23

Citation: 2025 FC 226

Toronto, Ontario, February 3, 2025

PRESENT: Madam Justice Go

BETWEEN:

D.C., J.C., O.C., AND Z.C.

Plaintiffs

and

HIS MAJESTY THE KING IN THE RIGHT OF CANADA

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Plaintiff D.C. and his three children [Minor Plaintiffs] brought a claim against the Defendant for negligent investigation by the Canadian Forces Military Police [MP] and the Canadian Forces National Investigation Service [CFNIS] in relation to a criminal investigation [Investigation] into a house fire [Fire] that occurred at the residence then occupied by the Minor Plaintiffs and their mother, C.C., on July 20, 2015 [Claim].

[2] The Defendant, His Majesty the King in Right of Canada [Canada], brings this motion for summary judgment on the basis that there is no genuine issue for trial.

[3] For the reasons set out below, I grant the Defendant's motion. Canada did not owe the Plaintiffs a duty of care in relation to the conduct of the Investigation into the Fire. As such, I dismiss the Plaintiffs' action for not raising a genuine issue for trial, pursuant to Rule 215 of the *Federal Courts Rules*, SOR/98-106 [*Rules*].

II. Background

[4] Early on the morning of July 20, 2015, members of the MP were dispatched to the scene of the Fire at the residence that was, at the time, occupied by C.C. – the former spouse of D.C. – and the Minor Plaintiffs. At the time, both D.C. and C.C. were serving members of the Canadian Armed Forces [CAF]. The residence where the Fire occurred was a housing unit located on Canadian Forces Base [CFB] Edmonton.

[5] D.C. and C.C. had a high conflict divorce. On June 26, 2015, the Court of Queen's Bench of Alberta issued an order granting D.C. with primary residential care for the Minor Plaintiffs, on an interim basis, for one year beginning July 24, 2015. The court order also set out the schedule for parenting time to be shared between D.C. and C.C. with conditions imposed on both parents.

[6] On July 23, 2015, the CFNIS assumed investigative authority for the Investigation, after C.C. told the MP that she believed D.C. may have started the fire.

[7] The CFNIS investigated the Fire until May 10, 2016, when investigators concluded that they did not have sufficient evidence to identify who had started the fire or removed the smoke detectors in the residence.

[8] Meanwhile, the Cooperators Insurance Company [Cooperators], the insurer for C.C.'s residence insurance policy, also investigated the Fire. The investigator for the Cooperators noted in their report that the investigation "shows an incendiary fire with multiple hotspots. It is felt that the client started the fire." Cooperators subsequently denied C.C. insurance coverage on the basis that that the damage was caused by an "intentional or criminal act or wilful negligence by an insured."

[9] On July 23, 2016, D.C. made a complaint to the Military Police Complaints Commission [Commission] alleging that the CFNIS investigators did not handle the Investigation with professionalism or due diligence, and that investigators should have made a report to Child Services and recommended that C.C. not be allowed unsupervised visits with the Minor Plaintiffs [Complaint]. On December 17, 2017, the Canadian Forces Provost Marshal [Provost Marshal] advised D.C. that his allegations were not substantiated.

[10] On November 11, 2016, an individual came forward with a letter they believed may have been a suicide note written by C.C. [Letter]. The CFNIS carried out an investigation into the Letter and concluded in July 2017 that the Letter was ambiguous and did not make direct threats of self-harm or harm to others, nor could they determine when the Letter was written or by whom.

[11] On January 18, 2018, D.C. emailed the Commission with additional information about the Complaint. The Commission considered this to be a request for review and suspended its investigation while the Professional Standards Investigation Unit examined the additional information.

[12] On November 28, 2018, based on the recommendation of a CFNIS Major Case Advisor, as well as discussions between the Commission's then Chairperson and the Provost Marshal, the investigations into the Fire and the Letter were re-opened.

[13] On January 21, 2019, the Chairperson of the Commission placed her review of the Complaint in abeyance pending completion of the re-investigation and any resulting judicial proceedings.

[14] On August 29, 2019, the MP arrested C.C. and charged her with one count of arson with disregard for human life, one count of arson with damage to property, and the attempted murders of the Minor Plaintiffs.

[15] On February 24, 2023, C.C. was convicted in the Alberta Court of King's Bench on all charges. C.C.'s appeal was unsuccessful. She is currently serving a ten-year sentence.

[16] After the conviction of C.C., the newly-appointed Chairperson of the Commission took the review of the Complaint out of abeyance on March 10, 2023, and resumed the Commission's investigation of D.C.'s allegations.

[17] In a letter dated September 28, 2023, to D.C., the Chairperson of the Commission indicated that serious questions have been raised about a systemic failure to correctly assess the evidence at all levels within the CFNIS. Furthermore, the Chairperson considered whether the office of Professional Standards failed to note the apparent deficiencies in the initial CFNIS investigation of the Fire, and the related investigation into the Letter. In addition, noting that the charging and prosecution of C.C. were widely reported in the media, and the fact that the issues related to the Complaint have been raised in the public domain is a consideration which favours a public investigation, the Commission's Chairperson thus decided to designate the Complaint, which was filed as a conduct complaint, a public interest investigation.

[18] To this date, all four Plaintiffs continue to face significant trauma and medical issues that require ongoing therapy and support. D.C. left the CAF shortly before becoming eligible for a pension. D.C.'s application for disability benefits due to medical conditions that he attributed to the Fire and the Investigation was denied by Veteran Affairs Canada in August 2021. D.C. believes that the Minor Plaintiffs suffer from medical and psychological effects in large part because they are aware their own mother attempted to murder them. D.C. also believes that he and his children will continue to suffer the effects of the Fire and the negligent investigation by the CFNIS.

III. Issues

[19] The Defendant asks the Court to decide on this motion whether the Claim raises a genuine issue for trial. The Defendant puts forward two questions:

a. Whether the Defendant owed the Plaintiffs a duty of care when investigating the Fire; and

b. Whether the portion of the Claim brought by D.C. in his personal capacity is barred by operation of section 3 of Alberta's *Limitations Act*, RSA 2000, c. L-12 [*Limitations Act*].

[20] The Plaintiffs, referring to Rule 221(a) of the *Rules*, submit that the issue is whether there is a reasonable cause of action brought by the Plaintiffs. As I will explain further below, given that this is a motion based on Rule 215, and not Rule 221, the only question before me is whether there is a genuine issue for trial, which is subject to a different legal test than the test with respect to a motion to strike pursuant to Rule 221.

IV. Analysis

A. *Motion for Summary Judgment*

[21] The requirements for summary judgment are set out in Rule 215 that states, in part:

215(1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.	**215 (1)** Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

[22] Summary judgment motions must be granted when there is no genuine issue requiring a trial: *Hryniak v Mauldin*, 2014 SCC 7 [*Hryniak*] at para 47. As the Supreme Court of Canada [SCC] explained in *Hryniak* at para 49: "There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary

findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result."

[23] In *Gemak Trust v Jempak Corporation*, 2022 FCA 141 [*Gemak Trust*], the Federal Court of Appeal [FCA] noted at para 64 that "there will be no genuine issue for trial if there is no legal basis to the claim, or if the judge has the evidence required to fairly and justly adjudicate the dispute."

[24] The Defendant, as the moving party, bears the evidentiary burden of proving its case on a balance of probabilities, however, the Plaintiffs, as the responding party, are required to put their best foot forward in a summary judgment motion: *Gupta v Canada*, 2021 FCA 31 at para 29.

[25] In *Saskatchewan (Attorney General) v Witchekan Lake First Nation*, 2023 FCA 105 [*Witchekan Lake First Nation*] the FCA addressed what constitutes a genuine issue. Noting at para 35 that *Hryniak* marked a departure from the pre-existing approach to summary judgment, the FCA made clear that "the standard for granting summary judgment now requires that the judge have sufficient confidence in the state of the record that he or she is prepared to exercise judicial discretion to resolve the dispute." The FCA stated, at para 38, that the determination of whether a genuine issue for trial exists must follow a certain analytical path: the legal issues in dispute and their associated evidentiary requirements must be identified, the factual issues in dispute must then be extracted and assessed in light of their relevancy to the legal issues, and only when these questions have been answered can the sufficiency of the motion record be assessed.

[26] The FCA further noted that a case ought not to proceed to trial unless there is a genuine issue that can only be resolved through the full apparatus of a trial: *Witchekan Lake First Nation* at para 32. The FCA stressed at para 33 that the critical point is not whether the legal issue is important, but whether the matter presents credibility concerns or complex evidence that can only be adequately appreciated by means of a trial.

[27] As noted above, the Plaintiffs point to Rule 221 to argue that the Court should dismiss the motion because "there is a reasonable chance of success" for the Claim, given that the Defendant's own investigative body "has found serious breaches of operational regulations by the military police in this matter," and that there is "public interest in holding the military police accountable for their actions directly affecting these victims of serious crime" on a CFB.

[28] With respect, the Plaintiffs' reliance on Rule 221 is misplaced. The Defendant is not bringing a motion to strike the Claim on the ground that it "discloses no reasonable cause of action," pursuant to Rule 221(1)(a). Moreover, as the FCA reminded us, the mere fact that a summary judgment motion might have broader implications is not a ground for refusing it. judgment: *Witchekan Lake First Nation* at para 34.

[29] With that, I will apply the guidelines set out by the SCC and FCA to determine whether to grant a summary judgment motion under Rule 215.

B. *Is there a genuine issue for trial?*

[30] The Plaintiffs have made a claim for damages against the Defendant for "a negligent investigation by the [MP] and the [CFNIS] into the attempted murder of [the Minor Plaintiffs] and arson of a unit within the Private Married Quarters at CFB Edmonton." The Plaintiffs did not explicitly plead in the Claim what duty, if any, the Defendant owed the Plaintiffs.

[31] The Defendant surmises that it appears that the Plaintiffs believe that the Defendant owed them a duty to investigate the Fire, or to conduct the Investigation in a specific manner, noting that the Plaintiffs stated in the Claim that their "entire lives changed because of the lack of investigation into the fire and the conduct of the CAF throughout this period and seeks damages for mental distress."

[32] The Defendant submits that Canada did not owe the Plaintiffs a duty of care in relation to the Investigation, which is a necessary element of the Claim for negligence. Therefore, the negligence does not raise a genuine issue for trial and ought to be summarily dismissed.

[33] From what I can gather from their somewhat confusing and disjointed submissions, the Plaintiffs submit that while in general police owe a public duty of care in criminal investigations, their situation falls within a narrow exception which creates a private duty of care. The Plaintiffs further argue that their claim is novel and should be allowed to proceed.

[34] In the following sections, I will set out the common law jurisprudence with respect to duty of care arising from criminal investigations which establishes that the police do not owe victims of crime and their family a duty of care. I will then address the Plaintiffs' submissions about the exception to this general principle, and about the novelty of their claim.

i. Common law jurisprudence with respect to duty of care arising from criminal investigations

[35] As the SCC first introduced in *Cooper v Hobart*, 2001 SCC 79 and reaffirmed in *Childs v Desormeaux*, 2006 SCC 18 at para 15, as the case law develops, categories of relationships giving rise to a duty of care may be recognized, making it unnecessary to go through the two-part analysis under *Anns v Merton London Borough Council*, [1978] AC 728 (HL) [*Anns-Cooper* test] to establish whether there is a duty of care in the context of the case.

[36] Conversely, where it has been found that the particular relationship in question does not give rise to a duty of care, it is unnecessary for the court to apply the *Anns-Cooper* test again before it can strike a claim: *Attis v Canada (Minister of Health)*, 2008 ONCA 660 at paras 36-37.

[37] As the Defendant submits, and the Plaintiffs acknowledge, it is well-established law that police owe a duty to investigate crime to the public as a whole. Subject to some limited exceptions, the police do not owe a private law duty of care to the victims of crime or their family members in relation to any investigation. The extensive body of case law that establishes these principles include the following: *Goldman v Weinberg*, 2019 ONCA 224 at para 6; *RVB v Levin*, 2018 ABQB 887 at para 36; *Jones v AG Canada*, 2018 NBCA 86 at para 30; *Spencer v*

Canada (Attorney General), 2010 NSSC 446 at paras 56-58; *Deloitte Restructuring Inc v Canada (Attorney General)*, 2019 NBQB 201 at paras 223, 235-236; and *McLean v McLean*, 2017 SKQB 127 at paras 22-30.

[38] In *Wellington v Ontario*, 2011 ONCA 274 [*Wellington*], the Court of Appeal for Ontario [ONCA] held that the duty that police owe to investigate crime are "overwhelmingly public in nature." However, the ONCA did find at para 19 that the police owe a duty of care to targeted suspects, as recognized by the SCC in *Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 [*Hill*] and by the ONCA in *Beckstead v Ottawa (City) Chief of Police*, 37 OR (3d) 62, [1997] OJ No 5169. The ONCA also noted at para 20 in *Wellington* that the police owe a duty to warn a narrow and distinct group of potential victims of a specific threat, citing *Jane Doe v Metropolitan Toronto (Municipality) Commissioners of Police*, 74 OR (2d) 225, [1990] OJ No 1584 [*Jane Doe*].

[39] In *Wellington*, the plaintiffs were the parents of a deceased teenager who claimed that the criminal investigation into their child's death was conducted negligently. They claimed that a proper investigation would have led to criminal charges and that the negligent investigation had compounded their grief and distress. The ONCA struck the claim, noting at para 33 that no doubt the plaintiffs were "keenly interested in the outcome of the police investigation concerning allegations of criminal harm perpetrated against [their child]. But a parent's desire for a thorough police investigation does not give rise to a relationship of proximity sufficient to ground an action for damages in tort."

[40] Other cases that similarly confirm that the police do not owe a duty of care to victims of crime or to family members of victims of crime include: *Connelly v Toronto (Police Services Board)*, 2018 ONCA 368; *Thompson v Webber*, 2010 BCCA 308 [*Thompson*]; *John v Peel Regional Police*, 2016 ONSC 2016; and *Thelwell v Toronto Police Services Board*, 2020 ONSC 1803.

[41] While acknowledging in general that the police do not owe a private law duty of care, the Plaintiffs refer to *Green v Diack*, 2012 ABQB 45 to argue that the tort of negligent investigation exists in Canada. I note, however, that the plaintiffs in that case were suspects in a Royal Canadian Mounted Police [RCMP] investigation, to whom the RCMP owed a duty of care: *Hill*.

[42] The Plaintiffs cite other cases to submit that the Defendant owed them a duty of care. The cases they cite are either not on point, or otherwise do not assist them. For instance, the Plaintiffs cite cases dealing with actions taken by government agents or municipalities, and not by police in the context of criminal investigation: *Kamloops (City of) v Nielsen*, [1984] 2 SCR 2, 10 DLR (4th) 641; and *Nelson (City) v Marchi*, 2021 SCC 41 [*Marchi*].

[43] The Plaintiffs also cite *Marchi* as distinguishing between government action and government policy in order to determine if the action in question is immune from claims of negligence. In particular, the Plaintiffs argue that the matter before the Court is directly tied to the operational decisions made by the MP at the time of the events at CFB Edmonton and in the years following. The Plaintiffs submit that the actions, or lack of actions of the MP do not meet the standards of reasonableness for the investigation of serious domestic violence.

[44] I am not persuaded by the Plaintiffs' argument. While the MP may have been making certain operational decisions as they investigated the Fire, the core issue remains the same, namely, whether the MP owed the Plaintiffs a private law duty of care in the context of their Investigation into the Fire. By merely labelling the MP's actions as "operational" does not change the fact that the MP was conducting a criminal investigation, and as such the duty of care was owed largely to the public but not to private individuals, including those who are the direct or indirect victims of the crime in question.

ii. Did the Respondents fall within a "very limited, identifiable and specific group of victims" to which the MP owe a duty of care?

[45] As noted above, the jurisprudence has carved out certain narrow exceptions to create a private law duty of care in the context of criminal investigation. Referring to *Jane Doe*, the Court in *Wellington* described one such exception as a duty "to warn a narrow and distinct group of potential victims of a specific threat:" *Wellington* at para 20.

[46] Citing *McClemants v Pike*, 2012 YKSC 84 [*McClemants*] and *Jane Doe*, the Plaintiffs argue that they are a "very limited, identifiable and specific groups of victims" that the MP were aware faced a risk of harm, and that the MP's failure to act put the Plaintiffs at further risk of harm.

[47] The Plaintiffs point to the social worker's report that flagged the family as high risk, the information D.C. provided including the family court documents, and the reports of the fire investigation conducted by the Garrison Fire Department and by Cooperators. The Plaintiffs

submit that D.C. made clear to the MP of the fears he had regarding the attempted murder of his children as well as of further harm coming to the same children. The Plaintiffs argue the MP left the children at harm when they refused to investigate the Fire. Once the MP were pressured into re-opening the investigation into the Fire, they pursued an investigation of C.C. and no other person. These facts, argue the Plaintiffs, confirm a "proximate relationship" between the Plaintiffs and the MP to establish a private law duty of care.

[48] The Plaintiffs further submit that a crime was committed, and the MP could have prevented further harm had they conducted a proper investigation. The Plaintiffs also submit that their psychological harm was worsened because C.C. was not held accountable for her action, while the MP accused the children of starting the fire, thus requiring them to go through years of therapy.

[49] I find these facts do not put the Plaintiffs within the narrow group of victims to whom the MP would owe a duty to warn.

[50] First, the information and reports may support the Plaintiffs' allegations about the deficiencies in the investigation. However, they do not support the Plaintiffs' claim that the MP's faulty investigation resulted in further harm caused by a third party.

[51] In *Allen v New Westminster (City)*, 2017 BCSC 1329 [*Allen*], the Supreme Court of British Columbia noted that cases like *McClemants* were distinguishable from that case because "the harm to the victim in those cases was harm caused by a third party. In each of those cases,

the allegation in the negligence action was not that the investigators were the immediate cause of the harm, but rather that the harm caused by the wrong-doer might have been prevented if there had been a proper investigation:" *Allen* at para 26.

[52] Similarly, in the Claim before me, the Plaintiffs are alleging harm caused by the MP, not by a third party. Other than stating their fear of further harm, the Plaintiffs do not point to any actual harm caused by C.C. that might have been prevented had there been a proper investigation into the Fire by the MP. Instead, like the case in *Allen*, the Plaintiffs' allegation "is not that there was some physical harm that a thorough police investigation might have prevented, but rather that he suffered psychological harm simply as a consequence of the negligent investigation itself:" *Allen* at para 26.

[53] For their part, the Respondent submits that the case of *Thompson* is on all fours with the case at hand. I agree, as far as D.C. is concerned.

[54] *Thompson* involved a claim by an individual who complained to the police that his wife was beating the children. The police investigated and found the wife was in fact beating the children. No further investigation was pursued, and the wife was not charged with assault. In family proceedings, Mr. Thompson was ultimately deprived of unsupervised access to his children. He claimed against the police for damages including physical and emotional suffering resulting from the damage to his relationship with his daughters because of the negligence of the police in not conducting a full investigation, not charging his wife with assault, and not

forwarding its report to family services. The trial judge found the claim was bound to fail because no duty of care existed between the police and Mr. Thompson.

[55] The Court of Appeal for British Columbia dismissed Mr. Thompson's appeal, finding his relationship to the individual police officers involved in his complaint was not sufficiently proximate to find a duty of care. He was one party removed from the complaint. He was not within the circle of people the police would have reasonably identified as having the potential to be harmed by their actions.

[56] In the case at hand, D.C.'s situation is similar to that of Mr. Thompson. He is one party removed from the Investigation.

[57] In addition, all four Plaintiffs fail to establish that there was harm caused by C.C. that would have been prevented had the MP conducted a proper investigation into the Fire. The Plaintiffs also fail to establish what warning the MP had failed to issue to them, in light of the information that the Plaintiffs had provided. As such, I find the Plaintiffs do not fall within "a narrow and distinct group of potential victims of a specific threat" to whom the MP owed a duty of care: *Jane Doe*.

iii. Is the Claim novel and as such should be permitted to proceed?

[58] The Plaintiffs also describe the Claim as "novel" and argue that just because a cause of action has never been recognized does not preclude it from going ahead at this preliminary stage.

[59] The Plaintiffs cite *Odhavji Estate v Woodhouse*, 2003 SCC 69 [*Odhavji*] at para 46 to argue that the SCC applied the *Anns-Cooper* test in the context of the suits against the police.

[60] I note, however, as the ONCA explained in *Wellington* at para 26, that *Odhavji* did not establish a duty of care to the family of victims of crime arising from negligent police investigation. On the contrary, Iacobucci J., writing for the court in *Odhavji*, made clear that he was not deciding that the family could sue for negligent investigation. Rather, as the ONCA explained, the SCC allowed the family's claim for misfeasance in public office to proceed, a tort that requires an element of deliberate unlawful conduct as well as awareness that the conduct is unlawful and likely to harm the plaintiff: *Wellington* at para 26, quoting *Odhavji* at para 40.

[61] The Plaintiffs also rely on *Hill* to argue that many novel claims in tort have been brought against the police over the years. As already mentioned, the SCC in *Hill* concluded that the police owe a duty of care to suspects being investigated and is thus distinguishable.

[62] The Plaintiffs' main argument in support of a novel claim is that the military police service is not the same as the civilian police service. The Plaintiffs note the following distinctions specifically:

a. The unique setting of enforcement on a military base or in a military setting involves military members as well as civilians, such as military families living on a base;

b. The *Criminal Code* of Canada and provincial traffic laws apply but so do the *National Defence Act*, the *Code of Service Discipline* and the *Kings Regulations and Orders* (all citations omitted by the Plaintiffs). All of which is under the command structure of the

military environment influenced by the input of the Department of National Defence [DND];

c. Members of the MP have a multifaceted role within the CAF. They are first members of the CAF with operational military duties. They are simultaneously members of the MP who "provide professional policing, security and detention services to the CAF and DND globally, across the full spectrum of military operations." As such, they are responsible for traffic enforcement, emergency response, investigation into criminal and service offences, crime prevention, community relations programs, and several other roles;

d. The role of the MP includes attending to domestic violence incidents that occur within the military housing on military bases. The CAF has a formal policy on domestic violence and how it is handled within the military justice system; and

e. In this case, both parents were members of the CAF at the time of the criminal acts and subject to all administrative and disciplinary policies within the CAF. While D.C.'s chain-of-command acted on information that the children were at risk when brought to their attention, it was ignored by the MP. The chain-of-command for C.C. did not act on information brought to them of risk to the children by C.C. contrary to the Defence Administrative Orders and Directives on Family violence.

[63] I am not persuaded by the Plaintiffs' submissions.

[64] While the Plaintiffs argue military police are not the same as civilian police, and that the Claim is unique due to the MP's regulatory and statutory obligations, the Plaintiffs do not point to any specific regulatory or statutory provisions to support their argument. Indeed, the Plaintiffs do not even include a copy of any of the statutes and policy directives they rely on to support their argument.

[65] Further, as the Defendant notes, and I agree, many police services have instituted policies on how to handle specific types of crimes. The Plaintiffs fail to establish that the policies in question rise to the level of statutory duty imposed on police in specific circumstances to alter the relationship between the MP and the victims of crimes and their family to create a duty of care.

[66] I also note that every police service in Canada has a geographically defined jurisdiction where they provide multi-faceted services to the residents within a specific locale, and where they enforce federal, provincial, and in some cases municipal laws.

[67] The fact that both D.C. and C.C. were members of the CAF and that the CAF has a formal policy on domestic violence, does not alter the fact that the Investigation that gave rise to the Plaintiffs' suit was criminal in nature, nor does it transform the Plaintiffs' claim of negligent investigation into a novel claim.

[68] I acknowledge that unlike civilian police, the MP has other functions that are tied to the military structure of command. I note, however, that the Investigation that gave rise to the Claim was not linked to any military operation.

[69] At the hearing, the Plaintiffs cited a recent decision from the Ontario Superior Court of Justice to argue that there is systemic failure within the CFNIS in the way they conduct criminal investigations into domestic violence cases: *R v RB*, 2025 ONSC 153 [*RB*]. Specifically, the Ontario Superior Court of Justice found that the lack of training and systemic problems within

the CNFIS contributed to the error in their criminal investigation. On that basis, the court stayed the proceeding to remedy the multiple breaches of section 7 of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*] against the accused: *RB* at para 7.

[70] I fail to see the relevance of *RB* to the case at hand. Not only because, as the Defendant points out, the Plaintiffs fail to allege systemic issues in the Claim, but also because *RB* was a decision dealing with the *Charter* rights of an accused in a criminal trial and not the tort of negligent investigation in a civil claim.

[71] The Plaintiffs also cite *Rennalls v Tettey*, 2021 ABQB 1 [*Rennalls*] to submit that the conduct of the MP in this case does not align squarely with other claims of negligent investigations that have been categorically rejected by the courts. The Plaintiffs argue that in those cases, the alleged negligence occurred in the exercise of discretionary powers, whereas in the present case, the decision to investigate, the investigative steps, the assessment of whether to lay a charge, and the laying of a charge were all complete before the alleged negligence occurred. The Plaintiffs submit it was only after the case file was closed before any charge was sworn and then the years of persistence by D.C. to re-open the file with the same exact evidence resulting in charges and subsequent conviction, that the MP are said to have acted negligently.

[72] I reject this argument for three reasons.

[73] First, the facts in *Rennalls* are clearly distinguishable. The plaintiff in that case reported that she was sexually assaulted by Tettey; the police obtained a warrant for Tettey's arrest 18 months after the complaint and the warrant was not executed for another three years. The Crown stayed the charges against Tettey citing the delay by the police. The Court of Queen's Bench of Alberta upheld the decision to allow the plaintiff's complaint against the police to proceed, noting that the relationship between the plaintiff and the police described in the statement of claim could permit her to establish foreseeable harm arising from the police's inexplicably protracted failure to execute the warrant for the defendant's arrest. In other words, the plaintiff in *Rennalls* did not base her claim on negligent investigation, but on the delay of the police to arrest her alleged attacker, after the investigation was completed.

[74] Second, the decisions of the MP to investigate and to lay charges in this case, like the other cases cited, fall within their discretion.

[75] Third, the Plaintiffs' argument is self-contradictory by asserting the negligence took place after all the steps were complete, but at the same time stating that the MP's negligence lay in re-opening the file based on the same evidence.

[76] For these reasons, I reject the Plaintiffs' submission that their claim is novel.

iv. Conclusion

[77] In sum, the Claim is predicated upon the Plaintiffs demonstrating that the MP owed them a duty of care in the conduct of their investigation into the Fire. The established case law is that

police owe a public duty to investigate crime, and not a private duty of care to victims of crime or their family members. The Plaintiffs do not fall within the narrow and distinct group of potential victims of a specific threat to whom the MP may owe a duty of care.

[78] Further, there is nothing in the facts of this case to distinguish the Plaintiffs' relationship to the investigators from the relationship considered by the courts in cases like *Wellington* or *Thompson*. The Plaintiffs' assertion that the Claim is novel due to the MP's regulatory and statutory obligations and the military structure falls flat in light of the facts of the case and the lack of evidence before the Court.

[79] Applying the guidance set out by the SCC in *Hryniak* and by the FCA in *Gemak Trust*, I conclude that there is no legal basis to the Claim. It thus follows that there is no genuine issue requiring a trial.

C. *Was the action statute barred?*

[80] In view of my findings above, I need not address the Defendant's alternative argument.

V. Conclusion

[81] The Court is sympathetic to the Plaintiffs' circumstances and acknowledges the ongoing medical and mental health challenges they continue to face. My finding that the Claim has no legal basis has no bearing on whether or not the conduct of the investigation by the MP and the

CFNIS into the Fire met any reasonable standards set out for these institutions. However, for all of the reasons cited above, I grant the Defendant's motion.

VI. Costs

[82] The Defendant does not seek costs for the motion. The Court will award no costs.

JUDGMENT in T-573-23

THIS COURT'S JUDGMENT is that:

1. The Defendant's motion for summary judgment is granted.
2. The Plaintiffs' action is dismissed.
3. No costs are awarded on this motion.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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