

# Alberta Doctors' Digest

## Public duties of care and medical examiners

One of the first lessons in law school many students learn is the tort of negligence. At a high level, this concept involves determining whether an individual has failed to behave with the same level of care as an ordinary prudent person would in the same circumstances. However, to determine whether an individual was negligent, it is important to consider whether the individual who was allegedly negligent owes a “duty of care” to the individual harmed.

The concept of duty of care stems most famously from *Donoghue v Stevenson*, a 1932 English case. This peculiar case arose after an individual drinking ginger beer found a snail, which caused her severe gastroenteritis and mental distress, so she sued the manufacturer of the beer. The court in that case concluded that Stevenson (the manufacturer of the ginger beer) owed Donoghue a duty of care given the relationship that existed between manufacturers and customers generally and the reasonable foreseeability of potential harm to consumers that the manufacturer should have had in brewing the ginger beer. Since that case, courts have found that duties of care exist between numerous groups and professional relationships.

### Medical examiners and the duty of care

In the recent case *Paradis v DeGroot, 2023 ABKQ 31*, Applications Judge Summers was tasked with determining whether that duty of care existed between persons investigating a death, such as medical examiners, and the next of kin of the deceased.

In 2015, an individual was found deceased in his garage surrounded by a strong odour of exhaust fumes. There were no signs of a struggle, no suicide note and the security system in the home had not been engaged. The RCMP investigated the scene, and a doctor from the Office of the Chief Medical Examiner (OCME) was brought in to remove and examine the body. Toxicology reports later revealed that the deceased had a lethal level of carbon monoxide in his blood. The death was ruled a suicide.

The deceased’s wife subsequently requested an autopsy and filed a complaint about the RCMP’s investigation into her husband’s death. The autopsy revealed nothing further, but the RCMP investigation determined that officers should have taken better notes and interviews.

In 2016, the deceased’s wife requested that the Civilian Review and Complaints Commission (CRCC) for the RCMP re-investigate the claim about the RCMP’s negligent investigation. Half a year later, the CRCC released a report that the RCMP did not conduct a thorough investigation and had made various misrepresentations to the OCME. The CRCC recommended the RCMP complete its investigation into the deceased’s death and provide the proper evidence to the OCME.

The deceased’s wife subsequently filed a lawsuit against the RCMP officers, the Chief Medical Examiner, and the government, alleging that the RCMP were negligent in their investigation, which caused suffering, mental anguish and humiliation to the family. The plaintiff also sued the medical examiners for publishing a case report on the deceased,

which stated that he died of suicide (the cause of death was later amended in another report to “undetermined”). The defendants all subsequently applied for summary dismissal of the lawsuit, arguing that the defendants, in exercising their statutory duties, did not owe the plaintiff a duty of care, therefore the court should dismiss the case.

### **Does a duty of care exist?**

In determining whether a duty of care existed, Applications Judge Summers first reiterated the prominent Anns Cooper Test, which asked the following two questions:

1. Was the harm that occurred the reasonably foreseeable consequence of the defendant’s act?
2. Are there reasons, notwithstanding the proximity between the parties established in the first part of the test, that tort liability should not be recognized?

The first part of the Anns Cooper test, sometimes considered the “neighbour principle,” examines the relationship between the parties by looking at the foreseeability of the harm and the proximity between the parties. While both factors sound simple enough to understand, one party’s proximity to another is not solely based on physical location but rather, to quote *Donoghue v Stevenson*, requires one to ask:

Who then, in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

To further complicate matters, determining proximity requires the court to review the overall relationship between the parties and factors in each particular situation that link the parties in order to find that a duty exists.

In the second stage, the court reviews policy considerations such as the effect on society, others’ legal obligations and the legal system as a whole to determine whether the court should recognize such a duty.

### **Do public officials owe a duty of care?**

In their argument, the plaintiff stated that the defendants had a duty to responsibly investigate and determine the cause of death of the deceased. Given that the defendants had legal responsibilities to undertake outlined in the *Fatality Inquiries Act*, and since the next of kin could request investigations relating thereto, the plaintiff argued a relationship of proximity existed which gave rise to a duty of care.

The courts, however, have dealt with similar issues when public officials, in exercising their statutory authority, have been accused of negligence by an individual. While it is certainly possible that a duty to private individuals could arise, the mere existence of a statutory scheme, such as the *Fatality Inquiries Act*, is usually insufficient for the court to find proximity between the public official and the private person.

The reasoning behind this position is that public officials typically execute their duties under public laws that were drafted to promote public good. For example, the *Fatality Inquiries Act* outlines the various duties and obligations of medical examiners to review and investigate deaths. None of these obligations require a medical examiner, however, to keep in mind any particular individual other than the general public.

In other words, simply because the plaintiff could ask for an investigation under the statute did not mean that their interaction held any proximity. As Applications Judge Summers stated in paragraph 38 of his decision:

[38] I disagree with the Plaintiff that because of her interactions with those investigating her husband's death, she has proximity. This would provide proximity to everyone who was questioned or contacted by the police or anyone acting under the *Fatality Inquiries Act*. This could create the spectre of unlimited liability to an unlimited class— which is a concern recognized in the second part of the Anns test.

Overall, Applications Judge Summers concluded that this case presented no issues of contentious facts given that no duty of care existed between the parties.

This case serves as an important reminder to those in professional fields to consider which individuals they should have in contemplation as being potentially affected when carrying out their day-to-day tasks. While public authorities that carry out statutory duties do not generally need to contemplate particular individuals when exercising their public law duty, factual situations could arise in rare circumstances warranting the court to find negligence.

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Editor's note:

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