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When is the government's failure to fulfill its statutory obligations a negligent act?

The interaction between a government's statutory obligation and a common law duty of care can be a difficult area to navigate in negligence claims. In *Williams v Toronto*, the Ontario Court of Appeal held that, on the facts of that case, the failure of the City of Toronto to fulfil a statutory obligation was civilly actionable by residents. In so doing, the Court provides further guidance as to what surrounding circumstances can push such failures into the realm of negligence.

By way of background, in 2003, Ontario changed the classification of rooming houses and lowered tax rates on them. There was a statutory requirement for landlords to reduce tenant rents and for municipalities to provide notices of the rent reduction to those affected.

Williams v. Toronto was a class proceeding in which the Plaintiffs alleged that the City of Toronto failed to provide timely notice of that rent reduction. The class action was brought by tenants of the Parkdale Pilot Project (PPP), which was implemented by the City after extensive negotiations between the parties to address the issue of rooming houses that did not comply with municipal zoning and by-law requirements.

The class brought a motion for summary judgment, which was granted. The City of Toronto then appealed that decision.

The appeal focussed primarily on whether the motions judge was correct to determine that there was a sufficient relationship of proximity between the City and class members so as to justify recognizing that the City owed class members a private law duty of care, in addition to its public obligations under the *Tenant Protection Act*, S.O. 1997, c. 24 and *Residential Tenancies Act, 2006*, S.O. 2006, c. 17.

The Court of Appeal concluded that the motions judge was correct and dismissed the City's appeal.

In determining whether the City owed a duty of care, the Court of Appeal considered the three elements set out by the Supreme Court of Canada in *Cooper v. Hobart*: whether actions by the City could cause reasonably foreseeable harm to the class (which was not at issue); whether there was a sufficient

relationship of proximity so that it would be fair and just to impose a duty of care; and whether there were residual policy considerations for declining to impose such a duty.

As to proximity, in *Cooper* the Supreme Court had held that proximity should be assessed by "looking at expectations, representations, reliance, and the property or other interests involved" in order to "evaluate the closeness of the relationship between the plaintiff and the defendant". In this case, the Court held that the City's conduct created a specific relationship of proximity between the City and the class members. In particular, the City's involvement in the conflict resolution process leading to the creation of the PPP meant that there were specific interactions and a special relationship between the municipality and the class. Further, these negotiations meant that the City was very aware of the vulnerabilities of the class members and of the important impact that even a small reduction in rent would have. These circumstances brought the City into a sufficient relationship of proximity to the class members such that it would be fair and just to impose a *prima facie* duty of care.

In addressing the third *Cooper* element, the Court rejected the argument that residual policy reasons should prevent a duty of care being imposed. Contrary to what the City had argued, the Court held that liability would not be indeterminate because the class is the discrete PPP subgroup of Toronto tenants. The Court further held that imposing a duty of care would not inhibit the policy-making functions of the City, as it was a 'mere notifier' and not a policy maker in respect of property tax reductions and associated rent reductions. Finally, the City's obligation to provide notice would not have conflicted with any of its public duties.

Ultimately, *Williams v Toronto* confirms that public authorities can face civil liability arising from their public law obligations. While the risk of civil liability will not always be present, a duty of care can arise in cases where a public body is not only subject to statutory obligations, but is also actively involved in carrying out those obligations in a sufficient way as to create a relationship of proximity.

With notes from Camilla Draycott