



Adam, et al. v. Ledesma-Cadhit, et al.

2014 ONSC 5726

Country: Canada

Region: Americas

Year: 2014

Court: Ontario Superior Court of Justice

Health Topics: Child and adolescent health, Health information, Hospitals, Infectious diseases, Medical malpractice, Medicines

Human Rights: Right of access to information, Right to bodily integrity

Facts

This judgment deals with motions by the federal and provincial Crowns to strike out the plaintiffs' claims on the ground that the claims disclosed no reasonable cause of action against the federal or provincial government.

The plaintiffs' 5-year-old daughter, died five days after she received the H1N1 influenza virus vaccine. The daughter was in good health prior to administration of the vaccine. The plaintiffs allege the vaccination caused her death.

The plaintiffs brought claims under the tort of negligence against the physician who administered the vaccine (Dr. Ledesma-Cadhit), the manufacturer of the vaccine (GlaxoSmithKline Inc.), the federal Crown, and the provincial Crown. The claims against the federal and provincial Crowns alleged that the federal and provincial governments pressured health care professionals to encourage administration of the H1N1 influenza virus vaccine, did not advise the public of the possible adverse effects associated with vaccination, and did not warn either health care professionals or the public that certain populations (e.g. children in Aminatawalla's age group) are more sensitive to the adverse effects associated with vaccination

Decision and Reasoning

The Court allowed the motions to dismiss the claims.

The Court held that the federal and provincial Crowns did not owe a private law duty of care to the plaintiffs. Under the Anns/Cooper test, a private law duty of care will not be established where a legislative scheme is believed to be in the public's best interest. In this case, the governing legislation functioned to protect public health. The governments owed a duty to the public at large but not to particular individuals.

The Court held that even if a private law duty of care was established, the duty would be negated for policy reasons. First, the governments' actions were aimed at addressing a threat to public health. Their decisions were grounded in public policy. Establishing a private law duty of care could interfere with decision-making related to public health. Second, if a private law duty of care was established in this situation, the governments could face liability from an indeterminate number of individuals for adverse effects resulting from other recommended vaccinations.

The Court granted an Order to dismiss the plaintiffs' claims against the federal Crown and provincial Crown because it was plain and obvious that the plaintiffs' claims disclosed no reasonable cause of action. To succeed in a claim in negligence against a public authority, a private law duty of care must exist between the public authority and the plaintiffs. This duty was not established, hence the plaintiffs' claims failed.

Decision Excerpts

"The government mandate in each governing statute is to promote and protect the health of the entire population in the context of the spread of communicable diseases generally and the regulation of vaccinations distributed for sale in Canada. The regulators necessarily have broad discretionary powers to balance a multitude of competing interests while identifying and responding to widespread threats to public health. The risk assessment is population-based, rather than individual. The legislative functions are exercised for the benefit of the public as a whole and do not give rise to a private law duty of care to

particular individuals or sub-groups of the public" (Para. 122)

Â "Aminatawalla may belong to a populate group with hypersensitivities to vaccinations. Such a group is not readily identifiable or sufficiently discrete in the circumstances as pled to warrant proximity and duty different from that to the public at large. Hypersensitivity, side effects or reactions are inherent in any vaccination. The size of the affected group is indeterminate and the identity of its members is unknown by the public regulators. There can be no reasonable expectation of duty to such a vast unquantified, anonymous group." (Para. 159)

"The Crown's actions were aimed at mitigating the health impact on the public of a potential influenza pandemic. Urgent action was deemed necessary in the form of a public sponsored immunization program. Inherent in such a program is potential for some individuals to suffer harm (â€) Such actions were aimed at mitigating the health impact on the public of a potential influenza pandemic and cannot attract a private law duty of care. To do so would interfere with sound decision-making in the realm of public health and risk the displacement of public health priorities from the general public interest to the fear or threat of lawsuits."Â Â (Para. 163)

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