

Duty of Care - Is there a Genuine Issue Requiring a Trial?

Reported Case:	<i>Healey v. Lakeridge Health Corp.</i>
Citation:	[2010] O.J. No. 417
The Court:	Duty of Care; is there a genuine issue requiring a trial
Judgment Rendered:	Perell J, Ontario Superior Court
Issue:	January 29, 2010
Factual Summary:	<p>In 2003-2004, two patients at the defendant hospital were diagnosed with tuberculosis. It was alleged that the defendants failed to properly diagnose active TB and failed to take precautions to prevent the spread of infection and risk of harm. The court was to decide if the hospital had a duty of care to uninfected persons. It would have been a duty not previously recognized by the law. To establish the duty, the plaintiffs had to satisfy the <i>Anns v. Merton</i> tests for the recognition of a new duty of care.</p> <p style="padding-left: 40px;">(1) Is there a sufficiently close relationship between the defendant and the plaintiff such that in the reasonable contemplation of the defendant, carelessness on its part might cause damage to the plaintiff? and, (2) Are there any considerations that ought to negative or limit: (a) the scope of the duty; (b) the class of persons to whom it is owed; or the damages to which a breach of it may give rise.</p> <p>A duty of care analysis for a group, all of whose members are allegedly harmed by a defendant's misconduct, could produce different outcomes depending on the nature of the harm caused to the individual members of the group. The point to decide here was whether the hospital had a duty of care to the uninfected persons to prevent psychological injury, and that point is independent and different from whether the hospital had a duty of care to the infected persons to prevent physical injury.</p>
Decision:	<p>The court found there was no genuine issue requiring a trial: (a) the proximity element of the <i>Anns v. Merton</i> test for a duty of care was not satisfied; and (b) there were public policy reasons for not recognizing a duty of care by the hospital.</p> <p>The hospital's motion for a summary judgment was granted: (1) There was jurisdiction to grant a summary judgment under the revised Rule 20 of the <i>Rules of Civil Procedure</i> and it is appropriate to do so in this case; (2) The hospital had no duty of care to the uninfected persons; (3) the uninfected persons had not suffered compensable damages; (4) there was a genuine issue requiring a trial about causation-in-fact; (5) any compensable damages suffered by the uninfected persons are remote in law; (6) the claims of the uninfected persons and the associated claims of Family Law Claimants should be dismissed as against the hospital; (7) an aggregate assessment of damages was not available in these actions; (8) if an aggregate assessment were available, it was not proven.</p>