

CITATION: Laroza Estate v. Ontario, 2009 ONCA 373  
DATE: 20090507  
DOCKET: C48010

COURT OF APPEAL FOR ONTARIO

Sharpe, Juriansz and LaForme JJ.A.

BETWEEN:

Nelia Laroza, deceased, by her personal representative, Emiliano Laroza, Grace Laroza,  
Emiliano Laroza, Kenneth Laroza by his litigation guardian Emiliano Laroza

Plaintiffs

and

Her Majesty the Queen in Right of Ontario

Defendant

Lisa Miron for the plaintiff

Lise G. Favreau, Kim Twohig and Leslie McIntosh for the Defendants

Heard: February 25, 2009

On appeal from the order of Justice Maurice Cullity of the Superior Court of Justice  
dated August 22, 2005

**Sharpe J.A.:**

[1] This appeal, heard together with four other similar appeals,<sup>1</sup> raises the issue of whether Ontario can be held liable for damages suffered by individuals who contracted SARS during the outbreak of that illness in 2003.

[2] The respondent plaintiffs Nelia and Kenneth Laroza contracted SARS in May, 2003. Nelia Laroza was a nurse employed at North York General Hospital. Kenneth Laroza was her son. This action against Ontario for damages arising from Nelia Laroza's illness and death from SARS, from Kenneth Laroza's illness, and for damages for loss of care and companionship by their family members pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, is based on negligence, breach of statutory duty, breach of fiduciary duty, conflict of interest and breach of s. 7 of the *Charter of Rights and Freedoms*.

[3] As in *Williams*, *Albarquez* and the other related appeals, Ontario moved under Rule 21 to strike out the amended statement of claim ("the claim") on the ground that the facts as pleaded did not establish that Ontario owed the plaintiffs a private law duty of care.

[4] The motion judge incorporated his reasons for decision in *Williams* and *Albarquez* and struck out the allegations of negligence that he found dealt with duties owed by Ontario to the public as a whole. However, relying on the decision of the Divisional

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<sup>1</sup> *Williams v. Ontario* (C44220); *Abarquez v. Ontario* (C48011); *Laroza v. Ontario* (C48010); and *Jamal v. Ontario* (C48013). As the *Williams* appeal fell within the jurisdiction of this court and as it was in the interests of justice to have all appeals heard by the same court at the same time, the appeals that fell within the jurisdiction of the Divisional Court were, on consent, ordered to be heard by this court at the same time as the *Williams* appeal as a special case, pursuant to Rule 22. The judgments in all five appeals are being released at the same time.

Court in *Eliopoulos (Litigation Trustee of) v. Ontario (Minister of Health and Long-Term Care)* (2005), 76 O.R. (3d) 36, he refused to strike out substantial parts of the negligence claim against Ontario. He struck the claims for breach of statutory duty and breach of fiduciary duty. However, relying on his reasons in *Albarquez* he refused strike the *Charter* claim to and the claim for conflict of interest.

[5] The allegations of negligence made in this case are very similar to those made in *Albarquez* and in *Williams* and may be summarized as follows:

- failure to fund and have in place public health infrastructure, adequate resources, expertise, including effective public health systems, emergency response plans, disease information systems and adequate data collection methodology;
- failure to have any or adequate communications, or communications plans;
- failure to have any or adequate leadership and failing to coordinate and guide local health units;
- failure to enact legislation and failure to ensure the correct interpretation and understanding of legislation, failure to set guidelines regarding medical specialist qualifications;
- premature relaxation of the infection control procedures that had been imposed on hospitals to limit the spread of SARS and directing attention to lifting the WHO travel advisory and the premature dismantling of the POC;
- failure to enforce the *Occupational Health and Safety Act* and other legislation, failure to investigate under the OHS Act, failure to ensure compliance with Directives and occupational health and safety measures, including failure to conduct spot audits, provide equipment, instruct hospital staff and test equipment; and
- negligence in relying on an epidemiological link and failure to modify the definition for probable and suspect SARS, failure to provide for false negative test results and failure to monitor staff for SARS symptoms.

[6] These allegations essentially rest on the proposition that Ontario owed the respondents a general duty of care to protect them from contracting SARS. For the reasons given in *Williams* and *Albarquez*, I conclude that as pleaded, it is plain and obvious that these allegations do not give rise to a private law duty of care. Accordingly, in addition to the paragraphs struck by the motion judge, I would strike paragraphs 78, 82, 84, 86, 88-9, 91- 127 and 130 of the claim.

[7] The claim for “conflict of interest” and the *Charter* claim appear to be related. The conflict of interest allegation is that Ontario prematurely relaxed SARS controls because of concerns related to economic and tourism losses flowing from the WHO travel advisory. The claim under s. 7 of the *Charter* is based on the allegation that Ontario’s

actions and inactions...were contrary to the principles of fundamental justice when in particular they ignored their legislated and ethical mandates; and when their actions and inactions breached their fiduciary duties to Ontarians and to Nelia Laroza and to Kenneth Laroza and when they acted in conflict with their own mandates and preferred to aggressively address the economic and tourist fallout of SARS

[8] For the reasons given in *Albarquez*, I find that as pleaded, the claim fails to disclose a viable claim for damages for breach of s. 7 of the *Charter*. Accordingly, in addition to the paragraphs struck out by the motion judge, I would strike paragraphs 128 and 131- 135.

[9] In the result, I would allow Ontario's appeal, and strike the claim as disclosing no cause of action. If the parties are unable to agree as to costs, we will receive brief written submissions, from Ontario within fifteen days and from the respondents within ten days thereafter.

"Robert J. Sharpe J.A."

"I agree R.G. Juriansz J.A."

"I agree H.S. LaForme J.A."

RELEASED: May 7, 2009