

# Recent Developments in Police Liability

*A Selective Survey*

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# Liability of Police Investigators in Negligence

A growth area?

## Leading Cases

- Jane Doe (1998) Ontario Court of Justice
  - ✧ Investigators do owe a duty to people with whom they have a special relationship of proximity- identified likely victims of crime
- Hill v. Hamilton (2007) Supreme Court of Canada
  - ✧ Police investigators do owe a duty to people being investigated

## Leading Cases...

- Project 360 v. Toronto (2009) Ontario Superior Court
  - ✧ Investigators do not owe a duty to owner of bar where suspect under investigation shoots someone
  
- Wellington v. HMQ (2011) Ontario Court of Appeal
  - ✧ SIU investigators do not owe a duty to victims of crimes being investigated or their family members

**Struggle** – Who is entitled to sue police investigators for having been negligent in their investigation and causing harm as a result?

# Patrong

- Young black man shot by notorious gang member who was actively under investigation for shootings in the general area
- Is he owed a duty?

# Patrong #1 – (2013) Ontario Superior Court

- No – Mr. Patrong a member of a group of unidentifiable foreseeable victims
- No greater claim to police protection than any other resident of area
- Then claim amended
- Now alleged police knew Patrong – had stopped him before and police used him as bait
- Is Patrong now owed a duty?

# Patrong #2- (2015) Ontario Superior Court

- Patrong has pleaded into the “fiction” of Jane Doe
- But broader concern expressed
- Ultimate question should be:

Is it **fair and reasonable** that police ought to compensate the plaintiff for the losses alleged?

- Are courts moving away from the traditional “special relationship of proximity” analysis?

# Figueiras v. Toronto (York)

- Scope of common law police powers
- Interpretation and balancing of police duties/powers and individual Charter and common law rights



# Figueiras #1- (2014) Ontario Superior Court

- “Context is everything”
- Given the violence the day before and the threat of violence the day of – police common law powers appropriately exercised in requiring protester to submit to search before carrying on.
- Waterfield test
  - ✧ Were police acting within scope of duties?
  - ✧ If so, was it a justifiable use of police powers associated with the duty in the circumstances?
- If police acting within common law powers no violation of Section 9 (arbitrary detention) or Section 7 (liberty and security of the person)

# Figueiras #2 – (2015) Court of Appeal

- Police have broad duties but limited powers
- Waterfield – second stage requires balancing between interests of the police duty and the liberty interests at stake
- Here, liberty interests were freedom of expression (2(b) Charter) and common law right to walk a public street.
- Balance doesn't favour exercise of police power
- One officer's decision to stop those he perceives to be protesters not effective to prevent harm and not rationally connected to harm officer attempting to prevent

# Nissen v. Durham - (2015) Ontario Superior Court

- Duty is owed to protect confidentiality of informant and investigators liable for damages for failure to do so
- Not controversial but –
- Damages – **large**
- **\$345 000** – personal injury cap on damages does not apply
- Husband and children awarded **\$105 000** in total loss of care guidance and companionship damages