

## Court of Appeal Narrows Liability on Manufacturers in Landmark Product Liability Decision

### Background

Hundreds of people became ill in the summer of 2008 after consuming tainted ready-to-eat (“RTE”) meats manufactured by Maple Leaf Foods Inc. (“**Maple Leaf**”). As a result, Maple Leaf issued a widespread recall of RTE meats produced at the production plant where the infected meat originated. At the time of the listeria outbreak, Maple Leaf and Mr. Sub had an exclusive supplier arrangement, whereby certain menu items, including RTE meats, were to be supplied only by Maple Leaf. In the class action case of *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, Mr. Sub franchisees (the “Mr. Sub”) claimed that Maple Leaf was negligent and sought damages from Maple Leaf for loss of sales along with reputational harm arising from Maple Leaf’s recall of RTE meats. However, there was a lack of evidence that Maple Leaf actually supplied Mr. Sub with contaminated meat and that Mr. Sub customers were harmed from its consumption.

### Test to Establish Negligence

When analysing a claim for negligence in a product liability case, courts will consider whether the defendant owed a duty of care to the plaintiff. In doing so, courts undergo the following two-step analysis:

1. The Proximity Analysis: do the facts disclose a relationship of proximity where the defendant’s failure to take reasonable care might foreseeably cause harm to the plaintiff?
2. The Policy Considerations Analysis: if so, are there any policy reasons why a duty of care should not be recognized?

The dispute between Mr. Sub and Maple Leaf boiled down to whether Maple Leaf owed Mr. Sub a duty of care such that it was responsible for the damages claimed by Mr. Sub.

### Decision of the Ontario Superior Court of Justice

Maple Leaf brought a motion for summary judgment on the basis that it owed Mr. Sub no duty of care. Maple Leaf was largely unsuccessful. The court found that Maple Leaf owed a duty of care to Mr. Sub “in relation to the production, processing, sale and distribution of the RTE Meats.” The court framed this duty as a duty to supply a product fit for human consumption and that posed no risk of harm. The court found that the alleged harm was a reasonably foreseeable result of Maple Leaf’s conduct. In support of its conclusion, the court stated that Maple Leaf and Mr. Sub had a

“special relationship”, and, as such, Maple Leaf was obliged to be mindful of Mr. Sub’s “legitimate interests in conducting its affairs.”

In addition, the court concluded that there were no policy considerations arising from imposing a duty of care on Maple Leaf in favour of Mr. Sub. In fact, the court stated that imposing such a duty would appropriately heighten accountability.

### Decision of the Ontario Court of Appeal

Maple Leaf appealed the court’s decision. The Court of Appeal ultimately found that the motion judge made multiple errors in her decision, including her conclusion that Maple Leaf owed a duty of care to Mr. Sub for pure economic losses suffered from the reputation losses associated with the recall of RTE meats. The motion judge’s error stemmed from her failure to properly consider the two-step test to establish negligence.

#### *The Proximity Analysis*

In the first step, the motion judge ought to have determined not only the existence of a relationship of proximity but also the scope of the rights and duties that flow from that relationship. In the case at hand, the type of injury claimed – being economic losses arising from reputational harm – did not fall within the scope of any duty owed to Mr. Sub.

In particular, the Court of Appeal stated that even if there was a duty to supply meat fit for human consumption, any such duty was actually owed to Mr. Sub’s customers and not to Mr. Sub:

To conclude that Maple Leaf owed a duty of care in tort to the franchisees to protect them against the kinds of damages at issue on this appeal would be to enlarge the duty to safeguard the health and safety of customers by supplying fit meat to include a quite different and added duty to franchisees to protect against reputational harm. In my view, to do so would constitute an unwarranted expansion of a duty owed to one class of plaintiffs and extend it to the fundamentally different claim advanced by the franchisees...

Moreover, the Court of Appeal found that the reputational damages said to be sustained by Mr. Sub was not reasonably foreseeable because it did not fall within the scope of Maple Leaf's undertaking to Mr. Sub. Specifically, a plaintiff is entitled to rely on a defendant to act with reasonable care for the specific purpose of the defendant's undertaking. On the other hand, a plaintiff does not have the right to rely on a defendant for any other purpose, because any such reliance would fall outside the scope of the defendant's undertaking and, as a result, would not be reasonably foreseeable.

In the case at hand, the Court of Appeal found that Maple Leaf's specific undertaking to Mr. Sub was to supply meat safe for consumption by Mr. Sub's customers. The purpose of this undertaking was to ensure that customers would not become ill or die from eating the RTE meats. Contrary to Mr. Sub's position, the purpose of the undertaking was not to protect the reputational interests of Mr. Sub.

### *The Policy Considerations Analysis*

In the second step of the test to establish negligence, the Court of Appeal questioned whether imposing a duty in this case would be consistent with concerns about protecting public health. Ultimately, the Court of Appeal noted a key policy consideration against imposing a duty in this case: "[t]here is a strong public interest in encouraging manufacturers to act expeditiously in recalling products from the marketplace to avoid potential danger to customers." In other words, to impose the duty of care sought in this case could detract from the public need for manufacturers to act quickly in recalling defective products.

### **Key Implications**

The Court of Appeal's decision in *1688782 Ontario Inc. v. Maple Leaf Foods Inc.* appears to narrow the circumstances in which a duty of care may arise, to the benefit of suppliers and manufacturers in product liability cases.

It is clear that, in finding that a duty of care exists, courts must not only establish a relationship of proximity between the parties, but must also define the *scope* of the rights and duties stemming from that relationship. In addition, the duty of care analysis focuses on the specific harm claimed, which protects suppliers and manufacturers from being held liable for losses that are not reasonably foreseeable.



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