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From:	Romana Jurankova	**Date:**	December 22, 2011
RE:	Williams v. City of Toronto		
Court File No.: 306/11 & 351/11		**Pages (including coversheet): 14**	
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NOTE: Please find attached a copy of REASONS FOR JUDGMENT from Justices Pardu, Swinton and MacKinnon J.J. with regard to the above-noted matter.
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CITATION: Williams v. City of Toronto, 2011 ONSC 6987
COURT FILE NO.: 306/11 and 351/11
DATE: 20111222

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

PARDU, SWINTON AND J. MACKINNON JJ.

B E T W E E N:	
TERENCE WILLIAMS Applicant/Appellant	*Brendan Van Niejenhuis and Paul Saguil*, for the Applicant/Appellant
- and -	
THE CITY OF TORONTO Respondent (Respondent on Appeal)	*Mark Siboni and Christopher J. Henderson*, for the Respondent/ Respondent on Appeal
	HEARD at TORONTO: November 4, 2011

Swinton J.:

Overview

[1] The appellant Terence Williams appeals from the order of Perell J. dated May 13, 2011 denying his motion to certify the present application as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("the CPA") because the appellant did not meet the cause of action criterion in s. 5(1)(a) of the CPA.

[2] The City of Toronto ("the City") has also brought a motion for leave to appeal the costs order dated June 24, 2011, in which the motions judge ordered the City to pay the appellant's costs of the unsuccessful certification motion in the amount of $18,648.78.

[3] For reasons that follow, I conclude that it is not plain and obvious that the City owes no duty of care to the appellant. Consequently, the cause of action criterion in s. 5(1)(a) of the CPA has been met, and the appeal should be allowed. Given that conclusion, it is not strictly necessary to deal with the motion to bring a cross-appeal. However, in any event, I would not grant leave to appeal the costs award.

Factual Background

[4] Mr. Williams is the proposed representative applicant in this proceeding, which is brought on behalf of a group of rooming house and bachelorette apartment tenants in the Parkdale area (Ward 14) of the City of Toronto.

[5] The relevant facts for purposes of this appeal are set out in the Notice of Application, which states that the City of Toronto has administered a program known as the Parkdale Pilot Project since 1999 ("the Project"). The Project was intended to regularize a large number of illegal and/or unlicensed rooming house buildings in the Parkdale area.

[6] It is alleged that a significant element of the Project relied upon amendments to the *Assessment Act*, R.S.O. 1990, c. A.31 in 2003, which permitted the reclassification of the rooming houses from the higher "multi-residential" tax class to the lower "residential" tax class. Property owners in at least 32 Parkdale rooming houses received property tax reductions of up to 66% per year between 2003 and 2008, contingent on their participation in the Project and their successful reclassification under the *Assessment Act*.

[7] Subsection 131(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 ("RTA") and its predecessor s. 136(1) of the *Tenant Protection Act*, S.O. 1997, c. 24 ("TPA"), when read with the applicable regulations, provide for an automatic reduction in rent for tenants of a residential building with seven or more rental units when the municipal property taxes for the building are reduced in a year by an amount greater than 2.49%.

[8] In these reasons, I will focus on the provisions of the RTA, which do not differ in substance from those in the TPA. Subsection 131(3) of the RTA imposes an obligation on a municipality to send a notice in writing of a rental reduction pursuant to s. 131(1) to both tenants and landlords of a residential unit when two conditions are met: first, the municipal property taxes applicable to the property in which the unit is located are reduced by more than 2.49%, and second, the property in which the unit is contained has seven or more units (see O. Reg. 516/06, s. 41(1) and (5)).

[9] The notice must inform the tenants that their rent has been reduced; set out the percentage by which their rent is reduced and the date on which the reduction takes effect; inform the tenants that they may apply to the Landlord and Tenant Board pursuant to s. 135 of the RTA for

the return of rent illegally collected if the rent is not reduced; and inform landlords and tenants of their rights to apply for an order under s. 132 (RTA, s. 131(4)).

[10] Subsection 41(6) of O. Reg. 516/06 requires that the notice be given to landlords between June 1 and September 15 and to tenants between October 1 and December 15. The regulation also specifies the method of delivery of the notice (s. 41(8)), and sets the date for the rent reduction to take effect as December 31 of the year in which the property tax reduction took place (s. 41(4)).

[11] Subsection 131(2) of the RTA states that the rent reduction shall take effect on the prescribed date whether or not the municipality gives the statutory notice.

[12] In respect of the 32 rooming house properties in Parkdale mentioned above, the City failed to send the statutory notices.

[13] The appellant lived in one of these rooming houses during the material time. He did not receive a reduction in his rent from his landlord, and as a result, he paid rent to his landlord in excess of the rent to which the landlord was lawfully entitled.

[14] In June 2008, in response to a freedom of information request, the City first disclosed that it had failed to send the notices to the 32 properties in earlier years.

[15] The appellant brought an application for judicial review against the City in 2009, seeking an order of mandamus requiring the City to issue the statutory notices. The Divisional Court dismissed the application on the grounds that the order of mandamus would no longer serve any useful purpose. I note that the City took the position in this proceeding that tenants might be barred from seeking relief from the Landlord and Tenant Board because of a one year limitation period found in s. 136 of the RTA (*Parkdale Residents Association v. City of Toronto*, 2009 CanLII 66906 (Div. Ct.) at para. 16).

[16] It is pleaded that prior to the disclosure by the City in June, 2008, "there was no reasonable means by which the Appellant or other members of the proposed class could reasonably have been aware that the property taxes in respect of the buildings in which they resided had been reduced" (Notice of Application, para. 2(r)).

The Certification Motion

[17] The appellant brought a motion to certify this application as a class proceeding. The proposed class consists of persons residing in Ward 14 of the City who, being tenants of rental apartments with seven or more units in respect of which the municipal property tax was reduced by more than 2.49% between January 1, 2003 and December 31, 2008 as a result of the buildings' participation in the Parkdale Pilot Project, did not receive the statutory notices of rent reduction.

[18] The motions judge found that the appellant had met all the requirements for certification pursuant to s. 5(1) of the CPA except s. 5(1)(a), although he concluded that the application

should be converted to an action. He found that the appellant had not satisfied s. 5(1)(a) because the cause of action criterion was not met. In his view, it was plain and obvious that the appellant does not have a cause of action in negligence or negligent misrepresentation against the City because of the lack of a duty of care.

[19] The motions judge set out the legal principles for determining whether there is a duty of care in tort. He concluded that the foreseeability criterion was met, as the City ought to have contemplated that without the statutory notice, the class members might not otherwise know of the reduction in the property taxes with their attendant right to a reduction in rent (Reasons, at para. 77).

[20] The motions judge also stated that there was proximity, but then said the relationship was not sufficiently close to give rise to a duty of care. He concluded that under the RTA, the appellant was "not in such a close and direct relationship with the City to make it fair and just that the City be held liable" (Reasons, at para. 79). He found it significant that the Legislature had imposed no statutory duty on the City to give notice to tenants in residential buildings with less than seven rental units or when a rent increase was less than the prescribed amount (Reasons, at para. 80).

[21] He also commented that the extent of the harm to tenants was not foreseeable, and harm to tenants was not inevitable. In addition, he observed that it was doubtful whether expectations or reliance by tenants should be placed on the City in carrying out its statutory obligation (Reasons, at para. 82).

[22] The motions judge also discussed policy considerations that would negate a *prima facie* duty of care. He spoke of the possibility of indeterminate liability on municipalities if they owed a duty of care to tenants who did not receive notices. He found it "undesirable" that the landlords' financial obligations should be shifted to the municipality and questioned the social utility of such a result (Reasons, at paras. 85-88).

[23] Despite this conclusion on s. 5(1)(a), the motions judge concluded that the other criteria for certification were met: an identifiable class, common issues that will advance the proceeding, and the preferable procedure. With respect to the latter criterion, he concluded that proceedings before the Landlord and Tenant Board ("the Board") were not a viable option, because of the expiry of limitation periods and because the claim against the City was for damages in negligence, not a disguised rent reduction (Reasons, at para. 111).

[24] The motions judge also dismissed the City's arguments that the doctrine of *res judicata* applied, or that the Board had exclusive jurisdiction. He did, however, state that he would order the application converted to an action if it were certified.

[25] In his costs decision, the motions judge noted that the City had admitted it erred in not sending the statutory notices; it had taken the position before the Divisional Court in the earlier application for judicial review that the tenants' claims to the Board were probably statute-barred, which had the effect of precipitating the proposed class proceeding; and it then reversed its position before the motions judge by saying the tenants did have a remedy before the Board. The

motions judge found the City's position to be wrong. This was one reason he ordered the City to pay the appellant's costs.

[26] As well, he noted that the appellant would have been successful on the motion but for one critical issue, namely the duty of care issue; there were novel issues of law raised in the proceeding; and the litigation had a considerable public interest component (Costs Endorsement, at paras. 12-15).

The Issues on the Appeal and Proposed Cross-Appeal

[27] There is only one issue on this appeal: did the motions judge err in law in finding that it is plain and obvious that there was no cause of action? As the appeal raises a question of law, the standard of review is correctness.

[28] In addition, the City brought a motion for leave to appeal the costs order.

The Cause of Action Issue

[29] A court shall certify a class proceeding if the elements of s. 5(1) of the CPA are met. In this appeal, the issue is whether the notice of application discloses a cause of action so as to satisfy s. 5(1)(a).

[30] The test to be applied under s. 5(1)(a) is whether it is plain and obvious that the pleadings do not disclose a cause of action or, in other words, it is plain and obvious that the claim cannot succeed. In determining whether the pleading discloses a cause of action, the material facts pleaded are to be accepted as true, and the pleading is to be read generously. Matters of law that are not fully settled by the jurisprudence should be permitted to proceed, so that they can be determined on the basis of a full record (*Nash v. Ontario,* 1995 CanLII 2934 (C.A.); *Anger v. Berkshire Investment Group Inc.*, [2001] O.J. No. 379 (C.A.) at para. 8).

[31] The motions judge set out the applicable legal principles to determine whether there is a duty of care in tort, as explained by the Supreme Court of Canada in a number of cases. Of greatest assistance is the recent case of *Fullowka v. Pinkerton's of Canada Ltd.,* 2010 SCC 5, a case that found provincial mining inspectors owed a duty of care to individuals killed by an explosion deliberately set during a strike. That determination was made after a trial.

[32] To find a duty of care, a court must examine the relationship between the plaintiff and defendant and determine if there is sufficient foreseeability and proximity to establish a *prima facie* duty of care. If such a duty is established, the court must determine whether there are policy considerations which negate or limit the duty of care (*Fullowka* at para. 18).

[33] The City did not take issue with the motions judge's finding that the foreseeability of harm criterion was met here. Therefore, I shall focus on the issues of proximity and policy considerations in the discussion that follows.

[34] The analysis of proximity focuses on the relationships in issue. In determining whether there is sufficient proximity when the plaintiff alleges a duty of care on the part of a government defendant, the Supreme Court has stated that the statute is the foundation of the proximity analysis and policy considerations. The court must consider whether the alleged duty of care conflicts with other overarching statutory or public duties, or if there is a statutory immunity provision in the legislation (*Fullowka* at para. 39). However, the analysis goes beyond the statute and also requires a consideration of whether there is a sufficient relationship between the plaintiff and defendant, with the focus on "whether the alleged actions of the alleged wrongdoer have a close and direct effect on the victim". The Supreme Court listed other considerations as including "expectations, representations, reliance and the nature of the interests engaged by the relationship" (*Fullowka* at para. 40). Ultimately, the Court must decide whether "it is just to impose a duty of care in the circumstances" (*Edwards v. Law Society of Upper Canada*, [2001] 3 S.C.R. 562 at para. 9).

[35] In the present case, the motions judge focused only on the statute in determining whether there was a sufficient relationship between the plaintiff and the City to found a duty of care. While that was the correct starting point, in my view, the motions judge erred in failing to also consider the facts pleaded, when determining whether there was a sufficient relationship between the City and the appellant and other residents of the 32 rooming houses in Parkdale to found a *prima facie* duty of care. As the Supreme Court of Canada noted in *Syl Apps Secure Treatment Centre v. B. D.*, 2007 SCC 38, where a relationship occurs in the context of a statutory scheme, the analysis begins with the statute to determine if there is sufficient proximity between the parties (at para. 38). However, the Court also stated (at para. 30):

> Depending on the circumstances of the case, the factors to be considered in the proximity analysis include the parties' expectations, representations and reliance. There is no definitive list.

[36] In *Fullowka*, above, the Supreme Court considered both the statutory context and the factual relationship between the mining inspectors and the striking mine workers. Similarly, in *Heaslip Estate v. Ontario*, 2009 ONCA 594, the Ontario Court of Appeal emphasized that even if sufficient proximity does not arise from the relationship created by a statute, the interactions of the plaintiff and the government defendant can result in a finding of proximity (at paras. 15-22).

[37] When one turns to the provisions of the RTA, it is evident that the City has a clear statutory obligation to provide a notice of a decrease in rent to both landlords and tenants, if the municipal taxes are decreased by more than 2.49% and the residential complex has seven or more units. That is an obligation owed directly to both tenants and landlords.

[38] As a result, this is not a case like *Cooper v. Hobart*, [2001] 3 S.C.R. 537 or *Edwards v. Law Society of Upper Canada*, above. In each of those cases, the Supreme Court refused to find a private law duty of care to the plaintiffs on the part of the regulator. In *Cooper*, the Court held that the Registrar of Mortgage Brokers did not have a private law duty of care to investors; rather, its duty was to regulate so as to protect the interests of the public as a whole. In *Edwards*,

the Law Society did not have a private law duty of care to persons who deposit funds in lawyers' trust accounts. There, the Supreme Court of Canada stated (at para. 14):

> Decisions made by the Law Society require the exercise of legislatively delegated discretion and involve pursuing a myriad of objectives consistent with public rather than private law duties.

[39] In contrast to those cases, the City exercises no discretion nor any regulatory function under the RTA that would be inconsistent with a private law duty of care. Rather, the law imposes a clear duty on the City to provide the notice in the prescribed circumstances to landlords and tenants.

[40] It is true, as the City argues, that landlords have a positive obligation to reduce rent for tenants in the situation of the appellant, but this does not prevent a finding of a private law duty of care. So, too, in *Fullowka*, above, the legislation required the owners and managers of workplaces to act to protect the safety of workers, but that did not prevent the Supreme Court from finding a duty of care owed by the government inspectors, given the facts of the case.

[41] The motions judge was influenced by the fact that the City owes no obligation to give notice to tenants in buildings with less than seven units or where the tax reduction is less than 2.5%. I fail to see why this would obviate a duty to those who are included in the group to which notice must be given under the statute. The fact that the Legislature chose to distinguish among different groups of tenants does not change the fact that a certain group of tenants, including the appellant, was entitled to receive the statutory notice.

[42] More importantly, the statute is only the beginning of the analysis to determine whether there is sufficient proximity to found a *prima facie* duty of care. It is necessary, as well, to consider whether the relationship between the City and the appellant, a Parkdale rooming house tenant, would be sufficient to find proximity. In the context of s. 5(1)(a) of the CPA, the question is whether it is plain and obvious that there is insufficient proximity to found a *prima facie* duty of care to the appellant and the other Parkdale rooming house tenants.

[43] The appellant does not argue that there is a private law duty of care on the City owed to all tenants entitled to a notice, although the motions judge appears to have approached his analysis on this basis. Rather, the appellant has pleaded facts to show a specific and special relationship between the City and himself and other class members. The motions judge failed to consider that the appellant had pleaded that he and the class members fell within a specific group of tenants targeted by the City in the Parkdale Pilot Project.

[44] As pleaded, one of the express objects of the Project was to create property tax incentives for landlords by way of reclassification under the *Assessment Act*. It follows that this reclassification would provide a mechanism for rent reductions for a vulnerable group of tenants.

[45] In *Fullowka*, the Court stated that the proper focus is on the effect of the actions of the wrongdoer on the victim and, in particular, whether there is a close and direct effect. The City argues that its inaction does not have a close and direct effect, because landlords are expected to

implement rent reductions. That argument assumes landlords know their obligations and are willing to comply, and that tenants know their rights with respect to remedies. However, the notice obligation in the legislation is obviously designed to alert tenants to their right to a rent reduction if the landlord is not compliant and to inform them of a way to obtain redress from the Board. On the facts pleaded, read generously as one is required to do in a case such as this, the appellant and the class members are particularly vulnerable and would not know of their rights without the information in the notices. Indeed, the City had already taken action to protect them with the Parkdale Pilot Project.

[46] In my view, it is arguable that there is sufficient proximity to found a *prima facie* duty of care when the statutory duty to give notice is considered in light of the facts as pleaded showing the relationship between the City and the Parkdale tenants arising as a result of the Parkdale Pilot Project. This is not a case like *Cooper* or *Edwards*. If anything, it is closer to *Heaslip*, and therefore, the issue of the City's duty should be determined on the basis of a full factual record, as it was in *Fullowka*. It is not plain and obvious that the appellant would fail on this issue.

[47] The motions judge went on to find that even if there was a *prima facie* duty of care, policy considerations would negate that duty. In my view, he erred in law in doing so. It has often been stated that the defendant has the "evidentiary burden" to show countervailing policy considerations, and a court should be reluctant to dismiss a claim for policy reasons without a full record (see, for example, *Haskett v. Equifax Canada Inc.* (2003), 63 O.R. (3d) 577 (C.A.) at para. 52). Nevertheless, there are some cases where courts have considered policy considerations at the stage of the equivalent of a Rule 21 motion - for example, *Syl Apps*, above.

[48] However, in the present case, there are no conflicting duties on the City that would negate a duty to the appellant and the class members, as in *Cooper, Edwards* and *Syl Apps*. Moreover, this is not a case where the City is exercising discretion or making a policy decision which could create conflicts for it if a private law duty of care were found.

[49] The motions judge focused on two main considerations: the danger of indeterminate liability for the City and the inappropriateness of shifting the landlords' financial obligation to taxpayers. There are a number of problems with his conclusion. First, he had no evidence to support his conclusions; second, the City did not make these policy arguments before him; and third, this is not a case where the recognition of a duty to the Parkdale group of tenants would create indeterminate liability to tenants in general. As in *Heaslip*, above (at para. 33), the motions judge failed to consider the particular claim before him made on behalf of the appellant and a specific group of Parkdale tenants. This is not a case where the appellant was arguing there was a duty of care owed by municipalities to all tenants who should receive a notice.

[50] This is a case where the policy considerations should be determined after a Statement of Defence is filed and on the basis of an evidentiary record. The case raises a novel issue of law respecting the duty of care. It is not plain and obvious, when the pleadings are read generously, that the appellant's claim will fail. On that basis, I conclude that the motions judge erred in finding s. 5(1)(a) of the CPA was not met.

The City's Alternative Arguments

[51] The City argued that even if the motions judge erred in concluding that there is no cause of action, there are other reasons why this application should not be certified as a class proceeding: first, the appellant has failed to establish all the elements of negligence; second, the appellant's claim falls within the exclusive jurisdiction of the Board; and third, the motions judge erred in finding that the preferable procedure criterion was satisfied.

The Elements of Negligence

[52] In order to establish that a claim in negligence discloses a cause of action, a plaintiff must establish, in the pleadings, that the elements of the tort have been made out: a duty of care, a breach of the duty, and causation of damages in fact and in law. The City alleges that the appellant has not established that the failure of the City to send the statutory notices caused him damage. Essentially, the City argues that the tenants had a right to pursue recovery of overpayments from their landlords, and they could assert their rights up to one year following the date at which they learned they had made a rent overpayment. Moreover, there is no pleading that the appellant asserted a claim against his landlord pursuant to s. 135 of the RTA, or that such a claim was denied by the Board.

[53] The motions judge rejected this argument, stating that it raised questions about whether the cause of action had been proved and not whether a cause of action has been shown. I see no error in the motions judge's conclusion. In my view, this argument of the City goes to the merits of the claim, and the merits of a claim are not relevant to the issue of certification.

[54] Moreover, the elements of negligence have been properly pleaded by the appellant, including causation of harm. He stated at paras. 2(k) and (l) of the Notice of Application that it was directly as a result of the City's failure to send the necessary notices that he paid excessive rent.

The Alleged Exclusive Jurisdiction of the Landlord and Tenant Board

[55] I see no merit to this argument. The motions judge correctly concluded that the claim of the appellant against the City was not a disguised claim to recover rent. He described the claim as "fundamentally different from a claim for back-rent from this landlord", based as it is on the negligence of the City (Reasons, paras. 163 and 165).

The Preferable Procedure

[56] The City submits that this proceeding would be unmanageable because it intends to initiate third party proceedings against landlords to recover any loss that an individual tenant may have suffered.

[57] The question of preferability falls within the expertise of the motions judge, and his decision is entitled to deference. He held that the two common issues he identified would substantially advance the proceeding, and that the individual issues would not overwhelm the

common issues. He also considered access to justice and judicial economy. I see no basis for this Court to interfere with his conclusion that a class proceeding would be the preferable procedure.

[58] As the City's alternative arguments have not succeeded, the appeal should be allowed and certification should be ordered, as set out below.

The Motion for Leave to Appeal Costs

[59] Given my conclusion, it is not necessary to deal with the proposed cross-appeal. However, in the event I am wrong, I shall deal with this issue briefly.

[60] The City seeks leave to appeal the motions judge's order awarding costs to the appellant of the certification motion. It argues that he erred in principle, given that the appellant was not successful on the motion, and asks that this Court substitute an order of no costs.

[61] Leave to appeal a costs order is given sparingly, where there has been an error in principle or where the order of costs is clearly wrong (*McNaughton Automotive Limited v. Co-operators General Insurance Company*, 2008 ONCA 597 at paras. 23-24, 26).

[62] While costs normally follow the event, the motions judge set out his reasons for departing from that principle, given the unique facts of this case, including the City's change of position between the application for judicial review and the certification motion. In the circumstances, I would not grant leave to appeal the costs decision, as there was no error in principle, nor was the order clearly wrong.

Conclusion

[63] For these reasons, the appeal is allowed. The order of the motions judge is set aside and an order is to go certifying this proceeding as a class proceeding and referring the matter back to the motions judge to make the necessary order converting this application to an action. The motion for leave to appeal the costs order is dismissed.

[64] If the parties cannot agree on the costs of the appeal, they shall make brief written submissions through the Divisional Court office within 30 days of the release of this decision.

Swinton J.

J. Mackinnon J.

PARDU J. (Dissenting)

[65] In my view, Perell J. was correct in concluding that the relationship between the Plaintiffs and the City of Toronto was not sufficiently close and direct to give rise to a duty of care in negligence.

[66] Here there was no relationship between the tenants and the City of Toronto. The *Residential Tenancies Act* obligated the City to send a notice to tenants of residential complexes with more than seven units where municipal taxes were reduced by more than a specified amount, however, as noted in *Reference re Broome v. Prince Edward Island*, 2010 SCC 11 at paragraph [13], statutory duties "do not generally, in and of themselves, give rise to private law duties of care."

[67] The Court continued at paragraph [16],

> The question of whether there is sufficient proximity is concerned with whether the relationship between the plaintiff and defendant is sufficiently close and direct to give rise to a legal duty of care, considering such factors as physical closeness, expectations, representations, reliance and the property or other interests involved: [citations omitted]

[68] Here the City had no control over the rent charged by a private landlord, as it was not a party to the relationship between landlord and tenant. It had no way of knowing what rent was charged or whether it was a legal rent. There is no basis upon which it could be said that the tenants relied on the City to monitor the lawfulness of the rent charged by landlords. A statutory duty to give notice to a tenant does not in my view put the parties into a relationship of proximity.

[69] Here, landlords were offered tax incentives to improve the condition of rooming houses. It was expected that the tenants would receive the benefit of those improvements, and of some of the tax reductions, but this did not establish a relationship sufficient to ground a duty of care in tort between the City and the tenants. It was foreseeable that some landlords might fail to pass on the benefit of reduced taxes to their tenants, and that some tenants might fail to assert their right to a reduced rent in a timely fashion, when they might have done so had they received the notice from the City, however foreseeability alone is not sufficient to establish a relationship of proximity.

[70] The *Residential Tenancies Act* creates a comprehensive regime governing the relationships between landlords and residential tenants, and determination of the lawfulness of rents charged. There is nothing in that regime that suggests municipalities might also be responsible for the lawfulness of rent charged by others. In *Cooper*, an action against the Registrar of Mortgage Brokers for failure to suspend the licence of a mortgage broker, the Court noted at paragraph [43],

> In this case, the factors giving rise to proximity, if they exist, must arise from the statute under which the Registrar is appointed. That statute is the only source of his duties, private or public. Apart from that statute, he is in no different position than the ordinary man or woman on the street. If a duty to investors with regulated mortgage brokers is to be found, it must be in the statute.

[71] This is a claim for pure economic loss, and does not raise policy issues related to safety, or dangerous conditions imperilling bodily integrity or property. This case is also different from *Heaslip Estate v. Mansfield Ski Club Inc.* (2009), 96 OR (3d) 401 (C.A.) where there was a direct relationship between the injured person and the provincial air ambulance service. Here the claim against the City relies on a failure of the City to reduce the risk of harm caused by landlords charging excessive rents. This case is also different from *Fullowka v. Pinkertons of Canada Ltd.* 2010 SCC 5 where the entire focus of the mine inspectors' job was the employees' safety.

[72] The fact that the plaintiffs might be entitled to rent reductions because the landlord's municipal taxes have been reduced does not cast them into a relationship of proximity with the City. The *Residential Tenancies Act* provides generally that if property owners receive a tax reduction greater than a specified amount, the rent charged to tenants must be reduced by a regulated amount. Where the property contains more than 7 units, the City is obligated to send a notice to the landlord and the tenant, but the rent reduction is automatic and takes place whether or not a municipality gives notice.

[73] It was foreseeable that some landlords might fail to pass on the benefit of reduced taxes to their tenants, and that some tenants might fail to assert their right to a reduced rent when they might have done so had they received a notice from the City, however this alone is not sufficient to create a relationship of proximity.

[74] In my view it is plain and obvious that tenants of buildings where the property taxes have been reduced by more than the specified amount do not stand in a proximate relationship with the City, and agree with the decision of the motion judge that there is no cause of action against the City for breach of statutory duty or negligence.

Pardu J.

Released: DEC 22 2011