

Marie-Andrée Vermette discusses Duty of Care with *Law Times*

May 14, 2018



WeirFoulds partner and Chair of the Commercial Litigation Practice Group, Marie-Andrée Vermette, discusses the scope of the duty of care that is owed by a defendant as recently analyzed by the Ontario Court of Appeal in the article "Duty of care must be scrutinized, says OCA" featured in the May 14, 2018 edition of *Law Times*.

The Court of Appeal's decision in *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, a class action case related to the 2008 listeriosis outbreak, is the first appellate court ruling since the Supreme Court of Canada clarified the approach to identifying a duty of care last December in *Deloitte & Touche v. Livent Inc.*

In its decision issued April 30, the Court of Appeal overturned the motions judge and found that any duty Maple Leaf had in supplying safe "ready-to-eat" meats to Mr. Sub franchisees did not extend to economic losses suffered as a result of publicity from the recall of certain products at the time of the outbreak.

"The Court of Appeal is trying to bring "rigour" to the duty of care analysis, says Marie-Andrée Vermette, chairwoman of the commercial practice litigation group at WeirFoulds LLP in Toronto.

"You may have some form of duty, but what is it exactly? Where does it start and where does it end?" asks Vermette.

In its decision, the Court of Appeal is "highlighting" the need to engage in this level of analysis to define the scope of a duty of care, especially in light of the Supreme Court's decision in *Livent*, says Vermette.

In the case of Maple Leaf and the Mr. Sub franchisees, she says, the Court of Appeal also examined the undertakings of the food distributor and the reliance of the store owners.

"It cannot be broader than what was undertaken. Maple Leaf did not undertake to protect the reputations of the franchisees," says Vermette."

Please [click here](#) to read the full article.

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