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(Winnipeg Centre)
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COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

	)	Appearances:
	)	
JASMINE ANGEL BUSHIE,	)	Theodore L. Mariash
	)	for the plaintiff
plaintiff,	)	
	)	Alexander M. Menticoglou
-and-	)	for the Attorney General
	)	of Canada
ATTORNEY GENERAL OF CANADA AND	)	
DIRECTOR OF CHILD AND FAMILY	)	Michael G. Finlayson
SERVICES IN RIGHT OF INTERTRIBAL	)	for the Director of Child
CHILD AND FAMILY SERVICES,	)	and Family Services in
	)	right of Intertribal Child
defendants.	)	and Family Services
	)	
	)	JUDGMENT DELIVERED:
	)	October 16, 2019

HARRIS J.

Introduction

[1] This claim arises out of the investigation, arrest and detention of Jasmine Angel Bushie ("the plaintiff") in 2015 on charges of failing to provide the necessaries of life and manslaughter under subsection 215(1)(c) and section 236 of the ***Criminal Code***, R.S.C., 1985, c. C-46 (the "***Code***") with respect to the death of Kierra Williams ("Kierra").

[2] There are three motions for summary judgment before the court:

1. One by the plaintiff with respect to her claim against the Attorney General of Canada (the "AG");
2. One by the AG; and
3. One by the Director of Child and Family Services ("the Director") in right of Intertribal Child and Family Services ("ICFS").

Background

[3] The plaintiff is the daughter of Vanessa Bushie ("Vanessa") and was the half-sister of Kierra, who was born on October 8, 2012. Vanessa and Daniel Williams ("Daniel") were Kierra's biological parents.

[4] On or about September 12, 2012, ICFS apprehended two of Vanessa's children and then apprehended Kierra when she was born. All three children were returned to the care of Vanessa and Daniel by ICFS on July 2, 2013, at which time both parents agreed to a six-month order of supervision which was to expire on January 11, 2014 (the "Supervision Order").

[5] In October, 2013, Vanessa suffered a heart attack. On November 12, 2013, Vanessa and Daniel entered into a Family Support Service Agreement (the "FSSA") with ICFS which allowed ICFS to hire and place a person in the home to provide support to Vanessa in caring for the children. ICFS asked the plaintiff if she was willing to provide

that support and she agreed to do so. The plaintiff and ICFS then entered into a Homemaker/Parent-Aide Contract (the "Agreement")[1] which provided, in part, as follows:

> 6. The homemaker/parent-aide will carry out the following duties and responsibilities relating to the care of the children in the home:
>
> Cook meals every day for the children, do their laundry, make sure that Daniel attends day care every day.
>
> Keep the home in order for the mother Vanessa to have bed rest during the hours the homemaker is in the home.

[6] The plaintiff moved into the home of Vanessa and Daniel in early January 2014 and remained there until July 14, 2014. While in the home, she supported Vanessa and Daniel by caring for the children and doing routine housekeeping.

[7] On July 17, 2014, Kierra was taken to Percy E. Moore Hospital where she passed away that day. The preliminary autopsy report dated July 22, 2014 ("the preliminary autopsy report") indicated that the cause of Kierra's death was severe recent intra-abdominal trauma and chronic malnourishment, indicating that the injuries leading to her death were caused over an extended period of time prior to July 17, 2014. The Royal Canadian Mounted Police ("RCMP") were contacted and they commenced investigating Kierra's death.

[8] The plaintiff and Daniel were charged with manslaughter and failing to provide the necessaries of life in connection with the death of Kierra. Vanessa was charged with murder. On January 20, 2015, the RCMP arrested the plaintiff on a warrant dated

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[1] There is a discrepancy between the date on which the FSSA was to expire (February 11, 2014) and the date on which the Agreement was to expire (March 11, 2014). It is reasonable to conclude that both would be expected to expire at the same time. As the FSSA provides the authority for the Agreement, the Agreement should have been noted to expire on February 11, 2014.

January 19, 2015. She was taken to and held at the Winnipeg Remand Centre. On January 23, 2015, the plaintiff was moved into protective segregation following threats to her safety from other inmates as a result of the allegations against her. The news of her arrest and charges were broadly broadcast in Manitoba media as well as national media through the Huffington Post.

[9] On February 6, 2015, the Crown consented to the plaintiff's release from custody. As one of the conditions of her release was that she not be in the presence of children under the age of 14, she was forced to discontinue attending high school in Peguis First Nation. The plaintiff said that she was stigmatized as a "child killer" in her home community, was treated poorly by the local residents and made to feel unwelcome. She was subjected to verbal threats and abuse, both in the community and while working at a gas bar in Hodgson, Manitoba. On September 18, 2015, at approximately 11:30 p.m., three masked people broke into her home, stole money, damaged her wood stove, and assaulted her. She left her home community in November 2015 due to the ongoing threats, abuse and violence perpetrated against her by members of the community.

[10] The plaintiff's preliminary hearing was scheduled to commence on December 5, 2016, however, at that time, the Crown stayed both charges against her. Vanessa pleaded guilty to murder on August 2, 2017 and was sentenced to life imprisonment without the possibility of parole for 14 years. Daniel's trial was scheduled for February and March 2018, however, there was no evidence before me as to the outcome of those proceedings.

Causes of Action

[11] Following the termination of the criminal proceedings against her, the plaintiff commenced this action against the AG on behalf of the RCMP and the Director on behalf of ICFS, seeking damages for their alleged roles in her ordeal.

[12] The plaintiff claims that ICFS failed in its duty to provide information to the RCMP in a reasonable and diligent manner and to reasonably assist with the investigation of the death of Kierra. The plaintiff places emphasis on the fact that ICFS did not inform the RCMP that the Agreement expired in February 2014. The plaintiff says that after the Agreement expired, she had no legal duty to Kierra and had ICFS properly informed the RCMP of this fact, the RCMP would have concluded that she did not have a duty to Kierra within the scope of ss. 215(1)(c) of the ***Code***. The plaintiff also says that ICFS did not inform the RCMP that "all appeared to be well" when ICFS workers visited the home in January 2014.

[13] The plaintiff's specific allegations against ICFS are as follows (paras. 45-46):

> 45. ICFS owed the plaintiff a duty of care to provide information to the RCMP and the Crown in a reasonable and diligent manner, and to reasonably assist with the investigation of the death of Kierra Williams, in a manner which was consistent with its duties to the plaintiff's family, to the plaintiff herself and to the general public.
>
> 46. ICFS breached its duties to the plaintiff for the following reasons:
>
> (a) ICFS failed and/or refused to properly advise the RCMP and the Crown that the Agreement had expired in February 2014;
>
> (b) ICFS failed and/or refused to properly advise the RCMP and the Crown that on January 7, 2014 it had attended Vanessa Bushie's home and noted that all appeared to be well, while the plaintiff was still performing respite work;
>
> (c) ICFS failed to properly monitor Kierra Williams after the Agreement had lapsed, and appears to have wrongfully placed blame on the

plaintiff in order to minimize its own involvement in the death of Kierra Williams;

(d) the harms suffered by the plaintiff, as noted herein, were a reasonably foreseeable consequence of ICFS' negligent conduct; and

(e) there was sufficient proximity between the parties to impose a duty of care on ICFS.

[14] The Director says that no sufficient proximity exists between ICFS and the plaintiff to give rise to a duty of care and in any event, ICFS did no more than comply with a court order to provide the RCMP with their files which had all of the material information with respect to ICFS observations relative to Kierra and her care.

[15] The plaintiff's claim against the RCMP is based on the tort of negligent investigation, breach of her right under s. 7 of the ***Canadian Charter of Rights and Freedoms*** (the "***Charter***") and false imprisonment. More specifically, she alleges that (para. 41):

41. The RCMP breached its duty of care to the plaintiff for the following reasons:

(a) it failed or refused to investigate the death of Kierra Williams in a manner that was consistent with the RCMP's duty to the general public, in that it arrested and charged her without reasonable and probable grounds to do so;

(b) it obtained the Warrant to arrest her based upon materially false information, as noted above, and the RCMP knew or ought to have known that this information was incorrect;

(c) it failed and/or refused to properly review the Agreement and related ICFS disclosure;

(d) it failed and/or refused to take reasonable care in specifically investigating the plaintfiff in regards to the death of Kierra; and

(e) it failed and/or refused to take reasonable care in making the decision and/or recommendation to arrest and charge her in relation to the death of Kierra Williams.

[16] The plaintiff asserts that Corporal Grant Meyers ("Corporal Meyers"), the RCMP's lead investigator, lacked both subjective and objective reasonable and probable grounds to arrest her. The plaintiff says that neither the law nor the facts establish that there ever was an arguable case against her and that "the criminal case against her was doomed to fail." The plaintiff argues that "there was no evidence that the plaintiff had ever assaulted the deceased or otherwise committed an unlawful act on the deceased." The plaintiff further says that:

(a) the Agreement did not establish a duty of care and even if it did, that duty ended upon the termination of the Agreement (February 2014);

(b) the Agreement did not make the plaintiff the parent of Kierra nor did it impose parenting responsibilities on her;

(c) there is no allegation that she failed to fulfill her obligations under the Agreement; and

(d) the Agreement was for the benefit of Vanessa and not for the plaintiff and her siblings.

[17] She says that the only time she may have had a duty to Kierra was during the time period covered under the Agreement, but that such a duty ended when the Agreement expired on February 11, 2014.

[18] The plaintiff argued in her motion brief that (at para. 43):

> 43. For a criminal legal duty of care to exist, there must exist civil liability to provide for the deceased. There is no obligation imposed by statute or by common-law for one sibling to care or provide for another sibling. The obvious policy reason for this is that the law places that duty of care exclusively with the parents/guardians of the children.

[19] The plaintiff says that she was never Kierra's guardian and had never taken on parental responsibility for her and that the evidence available to the RCMP showed that Vanessa was almost always home and available to assume parental control of Kierra. In addition, Kierra's father, Daniel, lived in the family home full-time, presumably able to fulfill his parenting role.

[20] The plaintiff also asserts that the RCMP also knew or ought to have known that ICFS had responsibility for Kierra under its Supervision Order, which she says coincided with Kierra's malnourishment. The plaintiff argues in her motion brief that a reasonable police officer in similar circumstances should have known that reasonable and probable grounds did not exist to arrest the plaintiff for failure to provide the necessaries of life, thus the RCMP breached its duty of care to the plaintiff when it decided to arrest her for this offence.

[21] The AG says that the investigation by the RCMP was conducted in accordance with the appropriate standards and that the RCMP had reasonable and probable grounds upon which to charge the plaintiff with both offences. The AG further says that the existence of a legal relationship between ICFS and the plaintiff is not required in order to find that she had a duty to Kierra under ss. 215(1)(c) of the ***Code***. The AG further says that the charge of manslaughter was not based upon an allegation that the plaintiff assaulted Kierra, but that by failing to provide the necessaries of life, she committed an unlawful act which caused Kierra's death.

The Test for Summary Judgment

[22] ***The Court of Queen's Bench Rules***, Man. Reg. 553/88, as amended by Man. Reg. 130/2017 ("***Queen's Bench Rules***"), provides that:

> **Summary judgment motion**
>
> 20.01 A party may bring a motion, with supporting affidavit material or other evidence, for summary judgment on all or some of the issues raised in the pleadings in the action.
>
> . . . . .
>
> **Granting summary judgment**
>
> 20.07(1) The judge must grant summary judgment if he or she is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.
>
> **Powers of judge**
>
> 20.07(2) When making a determination under subrule (1), the judge must consider the evidence submitted by the parties and he or she may exercise any of the following powers in order to determine if there is a genuine issue requiring a trial:
>
> (a) weighing the evidence;
>
> (b) evaluating the credibility of a deponent;
>
> (c) drawing any reasonable inference from the evidence;
>
> unless it is in the interests of justice for these powers to be exercised only at trial.

[23] In ***Dakota Ojibway Child and Family Services et al. v. MBH,*** 2019 MBCA 91 ("***DOCFS***"), the court reaffirmed the former two-step process in summary judgment motions. Burnett J.A. summarized the law as follows (at paras. 110-112):

> [110] The analysis contemplated by Karakatsanis J in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, is itself a two-step analysis (see para 66). First, the motion judge must determine if there is a genuine issue requiring a trial based only on the evidence, without using any additional fact-finding powers. If there is such an issue, the second step requires the motion judge to determine if the need for a trial can be avoided by weighing the evidence, evaluating credibility, drawing inferences and/or calling oral evidence (see r 20.07(2)).

> [111] There is no shifting onus; the standard of proof is proof on a balance of probabilities; and the persuasive burden of proof remains at all times with the moving party to establish that a fair and just adjudication is possible on a summary basis and that there is no genuine issue requiring a trial.
>
> [112] In my view, the approach described in *Hryniak* and the two-step process described in *Homestead Properties (Canada) Ltd. v. Sekhri et* al, 2007 MBCA 61, 214 Man. R. (2d) 148, are consistent with the new rules in Manitoba ....

[24] While the within motions were argued prior to the release of ***DOCFS***, all parties agree that this approach is not inconsistent with their respective approaches in these motions.

Analysis

[25] It is conceded by the AG that the RCMP owed a duty of care to the plaintiff in the manner in which they carried out their investigation and their decision to charge her as they did. The standard of care was described by McLachlin C.J.C. (as she then was) in ***Hill v. Hamilton-Wentworth Regional Police Services Board***, 2007 SCC 41, [2007] 3 S.C.R. 129 ("***Hill***") (at para. 73):

> 73 I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made — circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results [Klar, Lewis N. *Tort Law*, 3rd ed. Toronto: Thomson Carswell, 2003, at p. 359]. Rather, it accepts that police officers, like other professionals, may make minor errors or errors in judgment which cause unfortunate results, without breaching the standard of care. The law

> distinguishes between unreasonable mistakes breaching the standard of care and mere "errors in judgment" which any reasonable professional might have made and therefore, which do not breach the standard of care. (See *Lapointe v. Hôpital Le Gardeur*, [1992] 1 S.C.R. 351; *Folland v. Reardon* (2005), 74 O.R. (3d) 688 (C.A.); Klar, at p. 359.)
>
> [Emphasis added]

[26] The Supreme Court also made it clear in ***Hill*** that the police are not required to (at para. 50):

> 50. ... make judgments as to legal guilt or innocence before proceeding against a suspect. Police are required to weigh evidence to some extent in the course of an investigation: *Chartier v. Attorney General of Quebec*, [1979] 2 S.C.R. 474. But they are not required to evaluate evidence according to legal standards or to make legal judgments. That is the task of prosecutors, defence attorneys and judges. This distinction is properly reflected in the standard of care imposed, once a duty is recognized. The standard of care required to meet the duty is not that of a reasonable lawyer or judge, but that of a reasonable *police officer*. ...

[27] In ***Nelles v. Ontario***, [1989] 2 S.C.R. 170 ("***Nelles***"), the Supreme Court affirmed the threshold required for reasonable and probable cause to arrest and charge an individual (at p. 193):

> ....
>
> ... Reasonable and probable cause has been defined as "an honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed" (*Hicks v. Faulkner* (1878), 8 Q.B.D. 167, at p. 171, Hawkins J.)
>
> This test contains both a subjective and objective element. There must be both actual belief on the part of the prosecutor and that belief must be reasonable in the circumstances. The existence of reasonable and probable cause is a matter for the judge to decide as opposed to the jury.

[28] Reasonable and probable grounds are both subjective and objective and it is not necessary to establish a *prima facie* case for conviction (***R. v. Storrey***, [1990] 1 S.C.R. 241 (at pp. 250-51)):

> In summary then, the *Criminal Code* requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.
>
> [Emphasis added]

[29] The plaintiff was charged under s. 215(2) of the ***Code*** for failing her duty under ss. 215(1)(c). Those sections provide as follows:

> **Duty of persons to provide necessaries**
> 215 (1) Every one is under a legal duty
>
> (a) as a parent, foster parent, guardian or head of a family, to provide necessaries of life for a child under the age of sixteen years;
>
> (b) to provide necessaries of life to their spouse or common-law partner; and
>
> (c) to provide necessaries of life to a person under his charge if that person
>
> (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
>
> (ii) is unable to provide himself with necessaries of life.
>
> **Offence**
> 215 (2) Every person commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse to perform that duty, if
>
> (a) with respect to a duty imposed by paragraph (1)(a) or (b),
>
> (i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

> (ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or
>
> (b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

[30] The AG says that the plaintiff's focus is misplaced in that the duty is not dependent upon the Agreement or the assumption of parental responsibilities and that there is an abundance of evidence showing that the plaintiff maintained a role as a person in charge of and assisting in the care of Kierra, both during and after the term of the Agreement, as required by the case law.

[31] I agree that the plaintiff's view on what gives rise to the duty referred to in ss. 215(1)(c) of the ***Code*** is not supported by the law. The existence of a duty is not dependent on a contractual relationship nor does it require an independent "civil duty" or "statutory duty" as proposed by the plaintiff.

[32] In ***R. v. Naglik***, [1993] 3 S.C.R. 122, the Supreme Court affirmed that the concept of duty is aimed at establishing a societal minimum for conduct (at pp. 141-42):

> ... The concept of a duty indicates a societal minimum which has been established for conduct: as in the law of civil negligence, a duty would be meaningless if every individual defined its content for him or herself according to his or her subjective beliefs and priorities. Therefore, the conduct of the accused should be measured against an objective, societal standard to give effect to the concept of "duty" employed by Parliament.
>
> The policy goals of the provision support this interpretation. Section 215 is aimed at establishing a uniform minimum level of care to be provided for those to whom it applies, and this can only be achieved if those under the duty are held to a societal, rather than a personal, standard of conduct. While the section does not purport to prescribe parenting or care-giving techniques, it does serve to set the floor for the provision of necessaries, at the level indicated by, for example, the

> circumstances described in subs. (2)(*a*)(ii). The effects of a negligent failure to perform the duty will be as serious as an intentional refusal to perform the duty.
>
> [Emphasis in original]

[33] Whether someone is "under the charge" of another is not limited to specific relationships and is to be decided based on the facts of the case. In ***R. v. Peterson*** (2005) 203 O.A.C. 364, 2005 CanLII 37972, the Ontario Court of Appeal stated (at paras. 34-36, 43):

> [34] Section 215(1)(c) differs from section s. 215(1)(a), which imposes a duty on a "parent, foster parent, guardian or head of a family" to provide necessaries "for a child under the age of sixteen years", and from s. 215(1)(b), which imposes a duty on spouses and common-law partners to provide necessaries of life to their spouses and partners. Section 215(1)(c) makes it clear that the duty to provide necessaries is not limited to these relationships but can arise in other circumstances. The duty arises when one person is under the other's charge, is unable to withdraw from that charge, and is unable to provide himself or herself with necessaries of life. The phrase "necessaries of life" includes not only food, shelter, care, and medical attention necessary to sustain life but also appears to include protection of the person from harm: *R. v. Popen* (1981), 60 C.C.C. (2d) 232 (Ont. C.A.) at 240. Thus, s. 215(1)(c) obligations are driven by the facts and the context of each case.
>
> [35] Subsection 215(2) imposes liability on an objective basis. The offence is made out by conduct showing a marked departure from the conduct of a reasonably prudent person having the charge of another in circumstances where it is objectively foreseeable that failure to provide necessaries of life would risk danger to life or permanent endangerment of the health of the person under the charge of the other. The personal characteristics of the accused, falling short of capacity to appreciate the risk, are not a relevant consideration. The use of the word "duty" is indicative of a societal minimum that has been established and is aimed at establishing a uniform minimum level of care: *R. v. Naglik*, [1993] 3 S.C.R. 122 at paras. 37, 51 and 33 respectively.
>
> [36] The objective basis of liability includes an assessment of whether the person in charge could have acted other than as he or she did. For example, in *Naglik* at para. 36, a "crucial consideration" was that the evidence indicated the services of a public health nurse were made available to Naglik to help her in caring for her child, given her age, education, and lack of experience with children. She refused to accept any assistance.

> [43] In assessing whether one person is in the charge of another, the relative positions of the parties and their ability to understand and appreciate their circumstances is a factor to consider. ...
>
> [Emphasis added]

[34] In ***R. v. S.B.***, 2017 ONSC 5924, a 20-month old child died three days after being scalded with hot coffee. The accused, the non-parental boyfriend of the deceased child's mother, was found to be a guardian of the child despite the lack of a formal legal relationship. The relationship between the accused and the child's mother was not stable and while he lived in the house, he did not undertake child care responsibilities, did not contribute financially to the family unit, and did not discipline the children. In rejecting the accused's argument that he did not have a duty, Pomerance J. said as follows (at para. 197):

> 197 The context in this case is very different. We are not concerned with the duty to rear a child, or support the rearing of a child, to an age of maturity. We are not concerned with the complexities of the parenting relationship and all that it entails. The question here is whether Mr. S.B. had a duty to provide the most rudimentary essentials necessary to sustain life, in circumstances where R.D. could not provide them for himself. Mr. S.B. may not have qualified to apply for custody of R.D. and he may never have been ordered to pay child support. But that cannot be the test under s. 215. Were it otherwise, the legislative objectives underlying s. 215 -- protection of the vulnerable and enforcement of a minimum level of care - would be substantially undermined. Persons may be duty bound to provide a minimum standard of care, even if they are not obliged to assume a full parenting role.
>
> [Emphasis added]

[35] It is clear that the legal relationship that the plaintiff says is necessary to give rise to a duty under s. 215 of the ***Code*** is not required in order to find criminal responsibility. The question is whether, in the circumstances, the plaintiff had a duty to provide the most rudimentary essentials necessary to sustain life.

[36] In the six months following Kierra's death, the RCMP interviewed several witnesses, including the plaintiff's four siblings, her mother Vanessa and her step-father Daniel, and D.G. and D.T. of ICFS, both of whom were involved at one time or another in the months prior to Kierra's death with Vanessa and her family, including the plaintiff. The plaintiff provided a 53-page statement to the RCMP on July 18, 2014. A Production Order was issued on August 14, 2014, by the Provincial Court of Manitoba (the "Production Order"), which resulted in over 1,600 pages of information from ICFS being provided to the RCMP. The RCMP also had both the preliminary autopsy report and the final autopsy report dated October 24, 2014 (the "final autopsy report"), which provided detail with respect to Kierra's injuries and the cause of her death. A subsequent and less detailed autopsy report dated November 4, 2014 (the "subsequent autopsy report") was also provided to the RCMP.

[37] The final autopsy report noted the following findings:

1. Malnourished child

2. Severe abdominal blunt force trauma

    2.1 Ruptured pancreas

    2.2 Laceration of liver, gastro-colic ligament and duodenum

    2.3 200 ml of blood in the peritoneal cavity (1/3 of total blood volume)

3. Multiple widespread bruises and abrasions, particularly numerous on the scalp, ears and face, with patterned injuries on the right and left sides of the scalp

4. Multiple healing factures of different ages:

    4.1 Ribs, bilateral

        4.1.1 Disruption of one of the left healing rib fractures

4.2 Left humerus

4.3 Right shoulder

4.4 Skull

5. Loss of multiple teeth, not due to decay

6. Healing laceration of the upper lip

7. Multiple scars on the face, torso and limbs

8. Brain findings (see Neuropathology Consultation report):

8.1 Severe widespread meningeal fibrosis and adhesions

8.2 Mild ventricular enlargement

8.3 Resolved subdural and optic nerve sheath hemorrhage

8.4 Focal recent ischemic damage in midbrain

[38] As a result of the investigation, the RCMP had the following information prior to arresting the plaintiff on January 20, 2015:

(a) The plaintiff, the adult sister of Kierra, lived in the home between January 2014 and July 14, 2014, providing respite and support for Vanessa following Vanessa's heart attack by assisting in care of Kierra and her siblings. While the plaintiff initially moved into the home pursuant to the Agreement, she remained in the home until July 2014 after the Agreement had expired in February 2014;

(b) While living in the home, the plaintiff was actively engaged in caring for all three of her younger siblings while also attending high school. She fed and bathed her siblings and "kept up with [them]". She also washed dishes, did the laundry, and cleaned the house. While the plaintiff said she spent most

of her time with the children even though Vanessa was almost always home, she also said that sometimes she was alone with the children;

(c) The plaintiff said that she always tried to help comfort Kierra, as she often cried and would not eat. The plaintiff described different strategies that she and Vanessa employed to encourage Kierra to eat, drink and settle. She was aware that Kierra did not eat well, cried often, and did not want people touching her. She assisted with Kierra's care at night as well when she would not sleep;

(d) The plaintiff was aware of Kierra's dehyrdration, malnourishment and injuries;

(e) The RCMP believed that the plaintiff was likely misleading them during her witness interview of July 17, 2014, as she primarily blamed Kierra for her own injuries and malnourishment, even though the medical evidence was consistent with Kierra having been physically abused and neglected over a long period of time;

(f) Many of Kierra's injuries, including several broken bones, dated back to a period of time when the plaintiff was living in the home and was assisting with Kierra's care;

(g) The medical evidence showed that Kierra's malnourishment dated back to before the plaintiff had moved into the home and continued for the entire time she was living there; and

(h) The final autopsy report confirmed that the cause of Kierra's death was intra-abdominal injuries due to blunt force trauma. Other significant conditions that contributed to Kierra's death included chronic malnourishment and blunt force trauma to the head, limbs and torso. Kierra suffered widespread bruising, two skull fractures, multiple rib and leg fractures, the loss of multiple teeth, and multiple scars all over her body. Based on the medical information contained in the autopsy reports, those injuries likely would have occurred when the plaintiff was living in the home. A reasonable inference, based upon the amount of time that the plaintiff spent with Kierra and her role in Kierra's care, was that the plaintiff would have been aware of Kierra's injuries and her malnourishment.

[39] Based on the information about the plaintiff's relationship with Kierra and role in her care as outlined above, Corporal Meyers subjectively concluded that Kierra was under the plaintiff's charge and that due to her age, was unable to withdraw herself from that charge. Accordingly, the plaintiff had a duty to provide Kierra with the necessaries of life. The plaintiff, being aware of Kierra's physical condition, failed in her duty to provide her with the necessaries of life, which, in this case may have been as simple as taking her to a doctor. Having formed the subjective belief that the plaintiff committed the offence of failing to provide the necessaries of life to Kierra, this would be sufficient to charge her with manslaughter. In my opinion, these set of circumstances would "reasonably lead any ordinarily prudent and cautious [person], placed in the position of ... [Corporal

Meyers], to the conclusion that [the plaintiff] ... was probably guilty of the crime imputed" (***Nelles***, supra at para. 27).

[40] Furthermore, prior to arresting and charging the plaintiff, the RCMP provided its full file to the provincial Crown Attorney's office. During November and December 2014 and January 2015, Corporal Meyers and Corporal Sherring exchanged numerous emails with two provincial Crown Attorneys in which they discussed the investigation. This led to authorization from a Crown Attorney on January 15, 2015, to lay charges and arrest the plaintiff for failing to provide the necessaries of life and manslaughter. Crown approval for these charges provides further support for Corporal Meyer's subjective reasonable and probable grounds.

[41] Whether the facts were sufficient to prove the allegations beyond a reasonable doubt would be determined at her trial. The RCMP were not required to make that legal judgment in order to lay the charges against her as they did.

[42] I am satisfied that I can reach a fair and just determination of the issues as to whether the RCMP were negligent in their investigation into the death of Kierra and whether there existed reasonable and probable grounds for her arrest on charges of failing to provide the necessaries of life and manslaughter on the basis of the evidence before me. On the basis of the evidence presented on the motion, I conclude that the RCMP were not negligent in the investigation and that they had reasonable and probable grounds to arrest and charge the plaintiff as they did.

[43] The plaintiff claims that her arrest by the RCMP violated her s. 7 ***Charter*** right not to be deprived of her right to life, liberty and security of the person except in

accordance with the principles of fundamental justice. She also claims for false imprisonment as against the RCMP.

[44] I have concluded that the plaintiff's arrest was based upon reasonable and probable grounds. The fact that the charges were subsequently stayed does not detract from the authority of the RCMP to arrest and detain her in accordance with the law. The plaintiff's detention, until released by a judge, was authorized by law. I agree with the submission of the AG that the decisions with respect to her detention and release were matters not within the authority of the RCMP.

[45] I am satisfied that I can reach a fair and just determination of the issues as to whether the RCMP violated the plaintiff's s. 7 ***Charter*** rights and wrongfully imprisoned her on the evidence before me. On the basis of that evidence, I conclude that the RCMP did not violate the plaintiff's s. 7 ***Charter*** right nor did they wrongfully imprison her.

[46] The plaintiff claims against ICFS, as set out in her statement of claim, as follows (at para. 45):

> 45. ICFS owed the plaintiff a duty of care to provide information to the RCMP and the Crown in a reasonable and diligent manner, and to reasonably assist with the investigation of the death of Kierra Williams, in a manner which was consistent with its duties to the plaintiff's family, to the plaintiff herself and to the general public.

[47] ICFS's role in this matter was to provide the RCMP with their files in accordance with the Production Order. All of the information relative to the Agency's involvement with Kierra and her family was contained within those files, including the information that the Agreement had expired in February 2014 and that "all appeared to be well" when Agency workers visited the home in January 2014. The plaintiff has not pointed to any

information that was material and within the knowledge of ICFS that was not provided to the RCMP.

[48] A similar situation was considered in ***Mazumder v. Bell Canada***, [2002] O.J. No. 2976 (S.C.J.) (QL). In the course of investigating harassing phone calls, Bell Canada provided information to the police pursuant to search warrants. The plaintiff argued that Bell Canada owed him a duty of care in responding to inquiries and a search warrant about the calls and that this duty was breached when Bell Canada failed to provide caller identification information to the police.

[49] In dismissing the plaintiff's claim, Rouleau J. said (at paras. 9-12):

> 9 The test to determine whether a duty of care exists has been referred to as the Anns test which, in the Canadian context, has been adopted in *Cooper v. Hobart*, [2001] S.C.J. No. 76. The first stage of this test is to determine whether the circumstances disclose reasonably foreseeable harm and proximity sufficient to establish a prima facie duty of care. The starting point for this analysis is to determine whether there are analogous categories of cases in which proximity, sufficient to establish a prima facie duty of care, has previously been recognized. If, as in the present case, there is no analogous category of cases, the court must determine whether there is foreseeable harm and proximity in the sense that the plaintiff and defendant were in a close and direct relationship such that it would be just to impose a duty of care in the circumstances.
>
> 10 In my view Bell Canada might well foresee injury to one of its customers or a member of the public if it were to provide incorrect or negligent information. I do not, however, believe that the facts and circumstances in the present case create a duty of care by Bell Canada to the plaintiff.
>
> 11 Firstly, interposed between Bell Canada and the plaintiff in this matter, were the police that had a statutory duty to investigate and determine whether a charge ought to be laid and, thereafter, the crown attorney who would determine whether there was a reasonable prospect for conviction. Both of these intervening players have been sued in different proceedings by the same plaintiff. Given that there was no direct request for assistance made by the plaintiff to Bell Canada, other than one small inquiry by plaintiff's counsel which inquiry was satisfactorily responded to, I do not see that there is sufficient proximity and foreseeable risk of harm to the plaintiff to impose a duty of care on Bell Canada. There is no cause of action in this matter, no matter how disputed facts are resolved.

> 12 Secondly, it is conceded that the information provided by Bell Canada did not lead to the prosecution and conviction nor did it play a role in the acquittal on appeal. It is simply alleged that clear or more complete information from Bell Canada may have been sufficient to avoid the charges or better equip the defence. I do not believe it is Bell Canada's duty, in the circumstances, to assume roles for either the prosecution or the defence.

[50] I agree with ICFS that no sufficient proximity exists since interposed between ICFS and the plaintiff is the RCMP who had the authority to investigate the death of Kierra. ICFS did nothing more than provide the information pursuant to the Production Order.

[51] If there was a duty of care, I am satisfied that there is no evidence that ICFS breached that duty. ICFS provided its files as requested and did not provide any incorrect information.

[52] The plaintiff says that ICFS failed or refused to advise the RCMP that when they went to the home on January 7, 2014, "all appeared to be well, while the plaintiff was still performing respite work." This information was provided by ICFS to the RCMP pursuant to the Production Order. Moreover, the fact that all was well on one day could not possibly negate the evidence that the RCMP had otherwise obtained and upon which they relied in forming their reasonable and probable grounds.

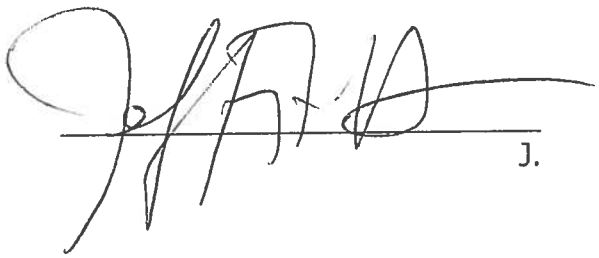
[53] Finally, there is no evidence that establishes that ICFS put blame on the plaintiff in order to minimize its own involvement in Kierra's death as the plaintiff has alleged. ICFS' involvement in the investigation was to provide their file information in accordance with the Production Order. There is no other evidence of any further involvement of ICFS in the investigation.

[54] I am satisfied that I can reach a fair and just determination of the issues as to whether ICFS was negligent as alleged by the plaintiff based on the evidence before me.

On the basis of that evidence, I conclude that ICFS did not have a duty of care to the plaintiff but if it did, that duty was not breached.

[55] As a result of the foregoing, I dismiss the plaintiff's claim against the AG and the Director and I dismiss the plaintiff's motion for summary judgment against the AG.

[56] The AG and the Director will have their costs which may be spoken to if the parties are not able to reach an agreement.



J.