

# TOP FIVE 2021

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases that are of significance in the educational setting. The 2021 cases were selected and discussed by Professor Sonia Lawrence of Osgoode Hall Law School in Toronto. Professor Lawrence is a leading scholar in Canadian constitutional law and a prolific champion working at the intersection of law and social justice. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

## ***1688782 Ontario Inc. v Maple Leaf Foods Inc., 2020 SCC 35***

**Date released: November 6, 2020**

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18539/index.do>

A “class proceeding” is a lawsuit commenced by one person on their own behalf and on behalf of others who have suffered the same loss or damage, arising from the same incident or cause, which occurred because of the actions of the same person, company or group. A lawsuit of this type is also sometimes referred to as a “class action” lawsuit.

### **Facts**

Maple Leaf Foods is a large-scale supplier of processed meat products. Among other clients, it provided prepared meats to the “Mr. Submarine” (“Mr. Sub”) chain of sandwich restaurants. This class action was brought by a corporation called 1688782 Ontario Inc., on behalf of 424 Mr. Sub franchisees against Maple Leaf Foods.

In 2008, there was an outbreak of listeria, a bacteria that can cause serious illness or death, at a Maple Leaf Foods facility in Toronto. Maple Leaf responded by recalling products it supplied to many clients, including Mr. Sub. The contracts between the Mr. Sub franchisees and the parent company prevented franchisees from seeking an alternative meat supplier.

1688782 Ontario Inc. argued that class members were affected by Maple Leaf Foods’ decision to recall these meat

products. 1688782 Ontario Inc. claimed that they experienced a meat shortage for six to eight weeks causing economic loss and reputational harm due to their association with recalled contaminated meat products. 1688782 Ontario Inc. (and the other franchisees) did not have a contract with Maple Leaf Foods. They had a contract with Mr. Sub that required the franchisees to purchase meat products from Maple Leaf Foods. The franchisees placed an order with a distributor who would in turn place an order with Maple Leaf Foods. Because the franchisees did not have a contract with Maple Leaf Foods, they had no recourse under contract law. Instead they advanced a claim in tort law seeking compensation for lost past and future sales, past and future profits, capital value of the franchises and goodwill.



To be successful under tort law, the plaintiffs needed to show that Maple Leaf Foods had a legal duty of care to the franchisees despite having no formal relationship with them under the law, and that they had been negligent in this duty. This would be a novel ruling, as courts have generally held no such duty exists for purely economic losses.

## Procedural History

At trial, the plaintiff advanced claims against Maple Leaf Foods for economic loss, in the form of lost profits, sales, capital value and goodwill and reputation. The motion judge found that Maple Leaf was responsible for the shop owners' losses. Maple Leaf Foods appealed this decision.

The Court of Appeal held that Maple Leaf did not owe a duty of care to the franchisees and dismissed that part of the claim. 1688782 appealed the decision to the Supreme Court of Canada (SCC).

## Issue

Did Maple Leaf Foods owe the franchisees a duty of care as the exclusive supplier of meat products?

## Decision

The SCC found that 1688782 Ontario Inc. and the other members of the class action were not in a sufficiently close business relationship with Maple Leaf Foods to

establish that Maple Leaf Foods owed them a duty of care. The appeal was dismissed.

## Ratio

Pure economic loss (i.e. loss unrelated to personal injury or damage to property) may be recoverable through monetary compensation in some cases but there is no general right in tort law protecting against the negligent or intentional infliction of pure economic loss.

## Reasons

The SCC defined three recognized categories of pure economic loss: (1) negligent misrepresentation or performance of a service; (2) negligent supply of poorly made goods or structures; and (3) relational economic loss. These three categories acted as analytical tools, relevant to the duty of care analysis. The proximity of the relationship between the parties is, however, the controlling concept.

To determine if Maple Leaf owed a duty of care to the franchisees, the SCC applied to the Anns Test, which considers the proximity (the closeness or the distance) of relationship between parties, and the foreseeability of injury.

- The Court found the relationship between Maple Leaf and the franchisees was not proximate



because that the franchisees had a contract with Mr. Sub, and not with Maple Leaf Foods. Contracts are only between the parties who agree to them. Maple Leaf did not have a contract with any of the franchisees saying it had to supply the meat to them. Proximity could not be established.

- Regarding the “foreseeability of injury”, the SCC found that the class action was claiming only “pure economic loss” because they were seeking damages for lost profits, sales, value, or goodwill. The Court found that Maple Leaf’s duty was to protect the public from getting sick from eating their meats, not to protect the franchisees’ business interests. Maple Leaf Foods was found responsible for removing the danger (by recalling the meat), but it was not found responsible for the shop owners’ lost profits, sales, value, or goodwill. Therefore, no duty of care could be established.

economic loss to the franchisees as a result of reasonable consumer response to the health risk posed by those goods.

## Dissent

Justice Karakatsanis found that Maple Leaf owed the franchisees a duty to take reasonable care not to place unsafe goods into the market that could cause



## Discussion

1. What is a class proceeding?
2. Why might Mr. Sub require that all its franchisees use the same meat supplier?
3. The SCC found that Maple Leaf had met its responsibility to the public by recalling the contaminated meat. In your opinion do they have responsibilities to Mr. Sub or its franchisees?
4. What responsibilities does Mr. Sub have in this case?
5. Although 22 people ultimately died from eating the contaminated meat, nobody became sick from eating food from Mr. Sub. In your opinion, would the Court have ruled differently if this was not the case?