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Broad discovery and social media disclosure affirmed in Muzzo at Neville-Lake

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In September 2015, a tragic collision between a Jeep Grand Cherokee driven by a driver under the influence of alcohol and a minivan resulted in the deaths of three children and their grandfather.

The driver of the Jeep (Muzzo) subsequently pleaded guilty to four counts of impaired driving causing death and two counts of impaired driving causing bodily harm. He was sentenced to ten (10) years imprisonment, less credit for time served.

In 2017, the mother of the children killed in the collision and other family members commenced a civil action against Muzzo as well as numerous corporate entities including his employer and the company that owned a private jet on which Muzzo had been a passenger returning from his bachelor party in Miami before driving the Jeep. Among other things, the family sought punitive damages against Muzzo.

Examinations for discovery were conducted in 2019 and a partial

summary judgment motion was scheduled for January 2023 to determine whether the claims for punitive damages against Muzzo should be allowed to proceed to trial.

In 2022, the Ontario Superior Court of Justice decided a motion arising from various questions that Muzzo had refused to answer during the examinations for discovery: *Neville-Lake v. Muzzo*, [2022 ONSC 5672 \(CanLII\)](#). In particular, Muzzo disputed whether a claim for punitive damages could be pursued at all since he had already been sentenced to a significant period of incarceration for the events at issue. Muzzo argued that the civil courts should not be going behind the sentences imposed by the criminal courts and therefore any questions relating to or touching upon these issues were improper and irrelevant.

On this point, Muzzo relied on jurisprudence which held that where there had already been a criminal punishment for wrongdoing, punitive damages would not serve a rational

purpose because the sentence imposed will have already met the requirements of denunciation and deterrence: *Whiten v. Pilot Insurance* [2002 SCC 18](#); *McIntyre v. Grigg* (2006) [2006 CanLII 37326 \(ON CA\)](#).

The motion judge rejected this argument for several reasons, the most important one being that the key purpose of discovery was to ascertain the facts about the claims at issue rather than to adjudicate those claims. Essentially, counsel for Muzzo was seeking to preclude any discovery on the issue of punitive damages on the basis of his assertion that the pending motion for partial summary judgment would fully dispose of that claim. In the motion judge's words: "This is not how discovery works."

Before the plaintiffs can face a summary judgment motion, they were entitled to an opportunity to request relevant evidence and lay out all of the facts in support of their position, which required Muzzo, to disclose documents that were relevant to the plaintiffs' claim for punitive damages.

In addition to punitive damages, the court addressed four areas of questioning that had been refused by Muzzo's counsel:

- a) Historical alcohol use and other related issues.
- b) Past driving infractions, including speeding.
- c) Social media posts and information.
- d) Statements made to police and the court as well as information about his incarceration.

Counsel for the plaintiffs sought disclosure over the entirety of the weekend trip to Miami while Muzzo's position was that discovery should be

limited to disclosure of the twenty-four hours before the accident took place.

The court noted, however, that the plaintiffs advanced a claim about a pattern of conduct more generally and, as a result, the facts of this case were not limited to the accident and the events immediately preceding the accident. Further, the allegations were about the conduct of all of the defendants and the events of the entire trip could potentially be relevant to both negligence and punitive damages. For the purposes of the scope of relevance, the court was not prepared to accept whether the events of the weekend were limited to the version put forth by Muzzo.

The court engaged in the same analysis for the relevance of past driving infractions since the plaintiffs have advanced the argument that punitive damages should be awarded based on the course of Muzzo's alleged conduct over a period of time and not just the accident giving rise to the claim. Without comment on the strength of that argument, the court determined that the information sought by the plaintiffs was relevant and had to be disclosed.

With regard to social media posts and information, the motion judge referred to prior decisions on the scope of disclosure for social media. In *Jones v. I.F. Propco*, [2018 ONSC 23](#), which also involved a motor vehicle accident, the court considered a request for the plaintiff to produce her Facebook account for a period of approximately nine years, covering time both pre-accident and post-accident. The court rejected the request on the basis that the plaintiff had a privacy interest in the Facebook postings and the defendant had not satisfied the court that there was relevant documentation in the Facebook posts.

Conversely, in *Leduc v. Roman* [2009 CanLII 6383](#) (ONSC), the court determined that it was “beyond controversy” that a person’s Facebook profile may contain documents relevant to a legal action and that a party who maintains a private, or limited access, Facebook profile stands in no different position than one who sets up a publicly-available profile. Both are obliged to identify and produce any postings that relate to any matter in issue in an action.

In the [Muzzo](#) case, the motion judge concluded that the same reasoning could be applied beyond Facebook to social media accounts more generally. At issue is a balancing of a party’s privacy interest, which protects disclosure of irrelevant documents and protects that party from overbroad disclosure requests, and a party’s obligation to disclose relevant documents. Privacy interests usually yield when the documents are relevant and not caught by privilege.

Muzzo had advised on discovery that his social media accounts were all deleted very shortly after this accident because of privacy concerns. He further advised that he did not have any posts on his social media that were relevant.

In the motion judge’s view, this assertion was not a complete answer to the plaintiffs’ requests and they were entitled to test that assertion by being provided with Muzzo’s usernames for his various social media accounts. Further, given that Mr. Muzzo was in Miami during the relevant weekend before the accident, the plaintiffs were entitled to social media posts that were made during this time if they still exist.

The court agreed, however, that the request for documentation for the entire period from 2012 to the present was overbroad and similar to what was sought in [Jones](#). Without more information than was filed for the motion, the court was

not prepared to accept that any other relevant posts exist.

Lastly, regarding the statements to police and the court and Muzzo’s incarceration, the court found that they were relevant and had to be disclosed given the plaintiffs’ pleading that the entirety of the criminal proceeding is in dispute. On the plaintiffs’ theory of the case, the consideration of punitive damages would extend not only to the sentence but to the question of whether the entirety of the punishment inflicted on Muzzo was a sufficient replacement for punitive damages. While there may be significant challenges with this argument, Muzzo could not avoid his disclosure obligations by pre-determining whether it would succeed.

The decision shows the broad scope of discovery obligations and the difficulties a party will have by attempting to limit disclosure based on their position that a claim will not ultimately succeed. A party seeking to dismiss a claim at an early stage to avoid discovery may attempt to resort to a rule such as [Rule 21.01 of the Ontario Rules of Civil Procedure](#), allowing for the court to determine whether or not a claim has any chance of success without engaging in an assessment of the evidence. If a claim is to be adjudicated on the merits, parties will generally be required to disclose and produce all of the relevant evidence in their possession, power or control.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact [James Cook](#), at 416.865.6628 or jcook@grllp.com.

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