

## B.C. Court Dismisses Cannabis Retail Lawsuit

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A [British Columbia \(B.C.\) court dismissed](#) a lawsuit from owners of [licensed cannabis](#) retail shops. [Last year](#), this group of [cannabis retailers](#) sued the province for not enforcing [cannabis](#) regulations.

While licensed cannabis retailers jump through bureaucratic hoops and pay excessive taxes on the faulty premise that this contributes to “public health and safety,” the B.C. Bud market of “illicit” retailers doesn’t face these same hurdles.

Particularly on Indigenous Reserves, where the plaintiffs claim damages of at least \$40 million in lost revenue.

Justice Basran considered whether the province owed the plaintiffs a private law duty of care in this context. The plaintiffs claimed the province committed torts of negligence and negligent misrepresentation.

But what does this mean? And was Justice Basran’s dismissal of the lawsuit justified?

### **Details of the Plaintiff’s (Cannabis Retail) Argument**



While the cannabis retailers suing the province wished to remain anonymous, [CLN uncovered](#) who they were. Their position is understandable. The government sold them a bill of goods.

When Canada legalized cannabis, the province of B.C. effectively said, “play by the rules and you’ll profit.” The reality has been anything but.

Obviously, licensed cannabis retailers are at a competitive disadvantage vis-a-vis the unlicensed [cannabis shops](#).

So why did Justice Basran dismiss the lawsuit?

First, let’s look at what the plaintiffs claimed in their suit. What do “torts of negligence” and “negligent misrepresentation” refer to in this context?

## **Tort Law**

Negligence is a fundamental concept in tort law. It means a failure to exercise a degree of care reasonable people would exercise in similar circumstances.

To establish a claim of negligence, the plaintiff (in this case, a group of licensed cannabis retailers) needed to prove the following:

- That the province of B.C. owed a duty of care to the licensed cannabis retailers.
- That the province breached that duty by failing to meet the standard of care expected under the circumstances (i.e. The province’s cannabis enforcement authority should have been raiding unlicensed shops more than they were)

- That the province's breach of duty directly caused harm or damages (i.e. Causation) to the licensed cannabis retailers
- And that these actual harms (or losses) result from the province's breach of duty.

The plaintiffs alleged that B.C. failed to enforce cannabis regulations (specifically, the Cannabis Control and Licensing Act) on Indigenous Reserves. They claimed this negligence resulted in damages of at least \$40 million.

Negligent misrepresentation is a specific type of negligence claim that arises when one party provides false or misleading information to another party, and the party receiving the information relies on it (to their detriment).

To establish negligent misrepresentation, the licensed cannabis retailers had to prove the following:

- That the province made a false statement, whether intentionally or not
- That the plaintiffs relied on this false statement
- The plaintiffs suffered financial (or other) losses from relying on this false statement.

In this case, the plaintiffs said that B.C. promised them a viable, legal, above-the-board retail [cannabis industry](#). One way of ensuring this would be to take enforcement action against unlicensed retailers, whether on Indigenous Reserves or not.

## Did the B.C. Government Owe a Duty of Care to the Cannabis Retailers?



Unlicensed cannabis shop in B.C.

Justice Basran considered whether the province owed the plaintiffs a private law duty of care. The B.C. government argued that it did not owe such a duty because the parties had no direct relationship.

But what does this mean?

In tort law, a “duty of care” is a legal obligation imposed on an individual (or group, entity, etc.) to exercise reasonable care and caution to prevent harm to others affected by their actions and omissions.

Of course, not all actions or omissions give rise to a duty of care. That’s where proximity comes in, which refers to the direct relationship between the parties. In this case, whether a direct connection between the province’s cannabis regulators and the cannabis retailers justifies imposing a legal duty.

Justice Basran had to determine whether the province of B.C. owed a “private law duty of care” to the cannabis retailers. Of course, B.C. argued that it did not. They argued that their duty was the “public interest,” not the economic interests of specific businesses.

Justice Basran agreed that no duty of care existed due to lack of proximity.

## How Did the Court Come to this Decision?



Justice Basran dismissed the B.C. cannabis retail lawsuit based on the “plain and obvious” legal standard used when deciding to strike pleadings.

The court considered the Anns/Cooper test to determine whether a duty of care existed. This involves two stages. First, whether the harm alleged was reasonably foreseeable. And second, whether there is a close relationship between the parties (proximity).

Justice Basran found no prima facie duty of care between the province and the licensed cannabis retailers. The court argued that B.C.’s cannabis regulations do not establish a legislative intention to create such a duty.

The court also ruled that the claims made by the province (i.e. Get licensed and profit) did not create a sufficient relationship to impose a duty of care.

Suppose the court had recognized that such a duty exists. Justice Basran was concerned such a decision could result in more of these types of lawsuits where the province (and its regulators) are held liable for the economic losses of numerous businesses due to their incompetence.

Justice Basran weighed the potential negative consequences of such a decision and decided it wouldn't be in the best interests of the legal system, taxpayers, or society as a whole to impose such a duty.



A B.C. court has dismissed the cannabis retail lawsuit. The decisions sound as if what's convenient for the government overrules what's just and fair.

Was Justice Basran's dismissal of the lawsuit justified? Judges are, after all, only human. And there is an appeals court. So, there may be more to the case in the future.

In the meantime, to argue that judges in Canada have far too much power, that they are, in effect, legislating from the margins is considered a "far-right" viewpoint.

But there is nothing "far-right" or even "far-left" about upholding the values that underpin our rule of law.

Suppose governments can evade the consequences of their actions because of the potential cost to taxpayers or the legal system. In that case, there is no rule of law.

It's rule by fiat masquerading as a rule of law.

#### **Footnote(s)**

<https://www.canlii.org/en/bc/bcsc/doc/2023/2023bcsc1641/2023bcsc1641.html>

