# The Canadian Abridgment eDigests -- Torts

2014-33
August 18, 2014

TOR.III.1.d

**Subject Title: Torts**

**Classification Number: III.1.d**

**Conspiracy -- Nature and elements of tort -- Miscellaneous**

In November 2011, plaintiff was removed from his student teacher practicum at high school -- T was teacher who supervised plaintiff for one course and S was school principal -- Subsequently, for his conduct as student teacher and other reasons, plaintiff was suspended from his studies at university teacher certification program -- Plaintiff blamed all defendants, claiming they conspired together to injure him by depriving him of opportunity to become certified teacher -- Plaintiff further alleged that T and S defamed him -- T and S successfully moved before master for summary judgment dismissing conspiracy and defamation claims against them -- Plaintiff appealed -- Matter appeared before court as fresh hearing of summary judgment motion pursuant to Rule 62 of Court of Queen's Bench Rules -- Motion granted -- T and S explicitly denied that they acted with malice, or in any way other than good faith in execution of their responsibilities as co-operating teacher and principal respectively -- Defendants denied they conspired with others against plaintiff -- Plaintiff did not directly challenge, contest, or lead contrary evidence respecting those denials -- Respecting defamation, it was clear that defense of qualified privilege existed -- There was clear evidence that T and S simply fulfilled their responsibilities to their school and students, and teacher certification program, to best of their abilities -- Parties established prima facie case that plaintiff's claims of conspiracy and defamation against them must fail.

*Green v. Tram* (2014), 2014 CarswellMan 283, 2014 MBQB 118, Martin J. (Man. Q.B.) [Manitoba]

---

TOR.III.2.a

**Subject Title: Torts**

**Classification Number: III.2.a**

**Conspiracy -- Practice and procedure -- Pleadings**

Liability of regulator -- Former employee of physician filed complaint against physician with College of Physicians and Surgeons for Saskatchewan ("CPSS") -- CPSS searched physician's clinic and seized various items -- Physician was ultimately convicted of professional misconduct and his license was revoked -- Physician commenced action against former employee and representatives of CPSS for damages for various causes of action -- Former employee and representatives of CPSS brought motion for order striking out statement of claim and replies as disclosing no reasonable cause of action and as abuse of process -- Motion granted -- New claims that physician included in replies were struck out as being improper subject matter of replies -- Claims based on Canadian Charter of Rights and Freedoms could not succeed since Charter did not apply to individuals -- Claim based on malicious prosecution could not succeed since discipline proceeding was not terminated in physician's favour -- Claim based on conversion could not succeed since items seized from

physician had not been converted -- Claim based on conspiracy was not properly pleaded -- Action was abuse of process since physician was trying to re-litigate matters that had already been determined in prior proceedings.

*Huerto v. Salte* (2014), 2014 CarswellSask 296, 2014 SKQB 127, R.D. Maher J. (Sask. Q.B.) [Saskatchewan]

---

TOR.V.5.b.ii.J

**Subject Title: Torts**

**Classification Number: V.5.b.ii.J**

**Defamation -- Privilege -- Qualified privilege -- When qualified privilege arises -- Miscellaneous**

In November 2011, plaintiff was removed from his student teacher practicum at high school -- T was teacher who supervised plaintiff for one course and S was school principal -- Subsequently, for his conduct as student teacher and other reasons, plaintiff was suspended from his studies at university teacher certification program -- Plaintiff blamed all defendants, claiming they conspired together to injure him by depriving him of opportunity to become certified teacher -- Plaintiff further alleged that T and S defamed him -- T and S successfully moved before master for summary judgment dismissing conspiracy and defamation claims against them -- Plaintiff appealed -- Matter appeared before court as fresh hearing of summary judgment motion pursuant to Rule 62 of Court of Queen's Bench Rules -- Motion granted -- T and S explicitly denied that they acted with malice, or in any way other than good faith in execution of their responsibilities as co-operating teacher and principal respectively -- Defendants denied they conspired with others against plaintiff -- Plaintiff did not directly challenge, contest, or lead contrary evidence respecting those denials -- Respecting defamation, it was clear that defense of qualified privilege existed -- There was clear evidence that T and S simply fulfilled their responsibilities to their school and students, and teacher certification program, to best of their abilities -- Parties established prima facie case that plaintiff's claims of conspiracy and defamation against them must fail.

*Green v. Tram* (2014), 2014 CarswellMan 283, 2014 MBQB 118, Martin J. (Man. Q.B.) [Manitoba]

---

TOR.VII.3.c.i

**Subject Title: Torts**

**Classification Number: VII.3.c.i**

**Fraud and misrepresentation -- Negligent misrepresentation (Hedley Byrne principle) -- Particular relationships -- Sale of land**

Vendor T purchased property recommended by defendant E as investment -- Appellant contractor M was retained to do renovations on E's recommendation -- Vendor sold property to plaintiff purchasers C, found by E -- Agreement of purchase and sale required list of work to be performed before closing -- Purchasers sued vendor, contractor and E for failure to repair items, latent defects and fraudulent misrepresentation -- Purchasers amended claim wherein vendor became plaintiff on basis he paid to complete renovations for purchasers -- Trial judge allowed purchasers and vendor's claim against E and contractor jointly and severally for $25,000 -- Contractor appealed -- Appeal allowed; judgment was set aside as it related to contractor -- Trial judge

discussed only E's involvement, such as preparation of agreement of purchase and sale, in discussing liability for negligent misrepresentation -- Contractor was performing work for vendor and had no interest in agreement of purchase and sale -- There was no contractual or special relationship between contractor and purchasers -- Contractor did not owe duty of care to purchasers and was not liable for negligent misrepresentation -- However, trial judge treated contractor in same way as E, which was incorrect.

*Chavez v. Ertan* (2014), 2014 CarswellOnt 6923, 2014 ONSC 3124, D.J. Gordon J. (Ont. Div. Ct.); additional reasons at (2014), 2014 CarswellOnt 10312, 2014 ONSC 4267, D.J. Gordon J. (Ont. Div. Ct.) [Ontario]

---

TOR.VII.3.e

**Subject Title: Torts**

**Classification Number: VII.3.e**

**Fraud and misrepresentation -- Negligent misrepresentation (Hedley Byrne principle) -- Miscellaneous**

Representations -- Vendor T purchased property recommended by defendant E as investment -- Appellant contractor M was retained to do renovations on E's recommendation -- Vendor sold property to plaintiff purchasers C, found by E -- Agreement of purchase and sale required list of work to be performed before closing -- Purchasers sued vendor, contractor and E for failure to repair items, latent defects and fraudulent misrepresentation -- Purchasers amended claim wherein vendor became plaintiff on basis he paid to complete renovations for purchasers -- Trial judge allowed purchasers and vendor's claim against E and contractor jointly and severally for $25,000 -- Contractor appealed -- Appeal allowed; judgment was set aside as it related to contractor -- Trial judge discussed representations made by E, but did not identify any made by contractor -- There was no evidentiary foundation supporting finding of liability for negligent misrepresentations made by contractor independent of E, as contractor's relationship was with vendor.

*Chavez v. Ertan* (2014), 2014 CarswellOnt 6923, 2014 ONSC 3124, D.J. Gordon J. (Ont. Div. Ct.); additional reasons at (2014), 2014 CarswellOnt 10312, 2014 ONSC 4267, D.J. Gordon J. (Ont. Div. Ct.) [Ontario]

---

TOR.X.1.b

**Subject Title: Torts**

**Classification Number: X.1.b**

**Interference with contractual relations -- Elements of tort -- Intention to cause loss**

Defendant W was in trucking business and subsidiary had contract with city of Toronto to transport waste -- Defendant R, another W subsidiary, was to implement contract and needed qualified drivers -- R approached plaintiff, driver recruitment agency, to obtain drivers for waste contract -- Plaintiff and R entered into oral agreement -- City put pressure on R to reduce costs of waste contract so R decided to phase out plaintiff's services and hire its own drivers -- W told plaintiff that its contract with R was terminated -- Plaintiff sued defendants for damages for breach of contract, interference with economic relations and inducing breach of plaintiff's employment agreements -- Trial judge found that R ought to have given plaintiff six months notice of termination and plaintiff was awarded damages of $73,093 -- R had gone bankrupt -- Plaintiff was awarded its

costs against R and W was awarded its costs against plaintiff -- Sanderson order was made requiring W to seek costs against R -- Plaintiff appealed and W cross-appealed -- Appeal and cross-appeal dismissed -- Plaintiff failed to prove that W was liable for inducing breach of contract -- Plaintiff failed to show that W intended to procure breach of contract -- Trial judge's finding that plaintiff contracted only with R was fully supported by record at trial.

*1670002 Ontario Ltd. v. Redtree Contract Carriers Ltd.* (2014), 2014 ONCA 501, 2014 CarswellOnt 8749, Gloria Epstein J.A., John Laskin J.A., Paul Rouleau J.A. (Ont. C.A.) [Ontario]

---

TOR.XI.1.f

**Subject Title: Torts**

**Classification Number: XI.1.f**

**Interference with economic relations -- Elements of tort -- Miscellaneous**

Plaintiffs sought $1 million in damages from defendants D, P and I for publishing defamatory words to third parties about them, and $1.5 million, in damages against all defendants for intentional interference with economic relations -- Plaintiffs based their claim for intentional interference with economic relations against P, I and defendant M Inc on same documents that contained alleged defamatory words -- Claim arose from alleged e-mails from D to third party businesses, which plaintiff G claimed accused him of deceptive, fraudulent and dishonest conduct -- G claimed P and I were acting in concert with D when he published defamatory words or that D was acting as agent for P and I -- G alleged that because of defendants conduct, corporate plaintiffs have been unable to secure additional contracts and business activity -- Defendants P, I and M Inc brought motion for order to strike out amended statement of claim or to dismiss action as against them for failing to disclose reasonable cause of action -- Motion granted -- E-mails did not contain defamatory words for which P or I could be held accountable -- Pleadings did not contain necessary connectors to show that P, I and M Inc were acting in concert with D when he wrote e-mails in issue -- Plaintiffs failed to plead breach of contract and, in fact, failed to allege there was contract in place to induce third party to commit breach -- Therefore, there could be no claim of inducement to breach contract.

*Gaur v. Datta* (2014), 2014 CarswellOnt 8826, 2014 ONSC 3923, Emery J. (Ont. S.C.J.) [Ontario]

---

TOR.XIV.2.a.iii

**Subject Title: Torts**

**Classification Number: XIV.2.a.iii**

**Malicious prosecution and false imprisonment -- Establishing elements -- Successful termination of proceedings -- Effect of plea bargain**

Plaintiffs were C, who was claimant for benefits under Worker's Safety Insurance Board, and A, who handled claim -- Both plaintiffs was charged with fraud in connection with benefits received from WSIB -- Charges were withdrawn in exchange for payment by C to WSIB -- Plaintiffs claimed that WSIB failed to conduct proper investigation and engaged in unlawful conduct, and that Ontario Provincial Police with-held information

and laid baseless charges -- Plaintiffs began proceedings against WSIB defendants, Crown, and OPP defendants in malicious prosecution, negligent investigation, abuse of public office, intentional infliction of mental suffering, and breach of Canadian Charter of Rights and Freedoms -- Defendants brought motions to strike statement of claim -- Motions granted in part -- Claims for malicious prosecution, negligent investigation, abuse of public office, and intentional infliction of mental suffering were tenable as pleaded and were not struck against WSIB defendants -- Not plain and obvious that payment by C to obtain withdrawal of charges meant that prosecution did not end favourably -- Claims of C and A were separate and actions by C did not necessarily affect A's claim.

*Adamson v. Ontario* (2014), 2014 CarswellOnt 8564, 2014 ONSC 3787, Perell J. (Ont. S.C.J.) [Ontario]

---

TOR.XVI.1

**Subject Title: Torts**

**Classification Number: XVI.1**

**Negligence -- General principles**

Dispute broke out between government and Fédération des médecins spécialistes du Québec (FMSQ) with respect to Act on provision of emergency services -- On three different occasions, FMSQ asked its members to leave their office to participate to special meeting with respect to dispute -- As result, several surgeries had to be postponed throughout province of Quebec and rescheduled each time -- Conseil pour la protection des malades (CPM) instituted class action against FMSQ, seeking $1,000 for each person whose appointment had to be postponed -- Trial judge held that medical specialists could not refuse to provide medical assistance to sick persons without valid reason -- Trial judge held that participating to meetings held by FMSQ was not valid reason -- Trial judge found that such meetings were in fact concerted work stoppages -- By calling meetings, trial judge found that FMSQ committed fault that was logical, direct and immediate cause of prejudice suffered by all people who had their appointments postponed -- Based on evidence, trial judge considered that 3,351 people had their surgery postponed and that 7,059 others had their examination postponed -- CPM's class action was allowed in part and FMSQ was ordered to pay $2,500,000 in moral damages and $2,000,000 in punitive damages, with interest from date of demand notice -- FMSQ appealed -- Appeal allowed in part -- FMSQ committed fault by encouraging medical specialists to leave their patients to themselves -- Evidence showed that people who had their surgery postponed clearly suffered moral damage, albeit at different levels, and should be compensated -- However, evidence showed that people who had their examination postponed were not severely impacted by FMSQ's actions and, consequently, should not be compensated -- Therefore, sum for moral damages should be reduced to $837,750.

*Conseil pour la protection des malades c. Fédération des médecins spécialistes (Québec)* (2014), 2014 QCCA 459, EYB 2014-234271, 2014 CarswellQue 1667, Fournier, J.C.A., Morin, J.C.A., Pelletier, J.C.A. (C.A. Que.) [Quebec]

---

TOR.XVI.3.a

**Subject Title: Torts**

**Classification Number: XVI.3.a**

**Negligence -- Causation -- General principles**

Dispute broke out between government and Fédération des médecins spécialistes du Québec (FMSQ) with respect to Act on provision of emergency services -- On three different occasions, FMSQ asked its members to leave their office to participate in special meeting with respect to dispute -- As result, several surgeries had to be postponed throughout province of Quebec and rescheduled each time -- Conseil pour la protection des malades (CPM) instituted class action against FMSQ, seeking $1,000 for each person whose appointment had to be postponed -- Trial judge held that medical specialists could not refuse to provide medical assistance to sick persons without valid reason -- Trial judge held that participating in meetings held by FMSQ was not valid reason -- Trial judge found that such meetings were in fact concerted work stoppages -- By calling meetings, trial judge found that FMSQ committed fault that was logical, direct and immediate cause of prejudice suffered by all people who had their appointments postponed -- Based on evidence, trial judge considered that 3,351 people had their surgery postponed and that 7,059 others had their examination postponed -- CPM's class action was allowed in part and FMSQ was ordered to pay $2,500,000 in moral damages and $2,000,000 in punitive damages, with interest from date of demand notice -- FMSQ appealed -- Appeal allowed in part -- There was no evidence that, on three occasions meetings were called by FMSQ, most of surgeries would have been postponed anyway -- Hence, only reason why surgeries were postponed on those three occasions was because FMSQ asked medical specialists to participate in its meetings -- Trial judge did not err in concluding that logical, direct and immediate cause of prejudice was fault committed by FMSQ -- Therefore, Court should not interfere with trial judge's findings.

*Conseil pour la protection des malades c. Fédération des médecins spécialistes (Québec)* (2014), 2014 QCCA 459, EYB 2014-234271, 2014 CarswellQue 1667, Fournier, J.C.A., Morin, J.C.A., Pelletier, J.C.A. (C.A. Que.) [Quebec]

---

TOR.XVI.8.c.iv

**Subject Title: Torts**

**Classification Number: XVI.8.c.iv**

**Negligence -- Occupiers' liability -- Particular situations -- Hotels and taverns**

Plaintiff was sitting at table at corporate defendants' bar (bar owners) with friends -- Defendant was intoxicated but he had been patron for years and was not considered by patrons or bar owners to be out of control -- Defendant and his girlfriend got into argument and girlfriend left; plaintiff's friend said, "way to go Richard" to defendant -- Defendant asked "who said that?" and within seconds threw chair in direction of plaintiff's table, hitting plaintiff on back of head -- Defendant plead guilty to related criminal charges, although he neither admitted nor denied throwing chair, maintaining he suffered from alcohol-induced blackout -- Plaintiff brought action for damages, claiming bar owners were liable, but was unsuccessful -- Court found that even if defendant was intoxicated, and even if bar owners were aware or should have been aware that defendant was intoxicated, there was nothing in bar owners' history with defendant that would reasonably cause them to be concerned for safety of other patrons -- Court found that bar owners were only under obligation to guard against danger that might reasonably have been anticipated; by time defendant asked who made comment about him, there had been no time to act -- Court concluded that plaintiff failed to establish bar owners should reasonably have foreseen and somehow averted injury caused by defendant -- Plaintiff appealed -- Appeal dismissed -- Trial

judge made no palpable or overriding error in her application of facts to applicable standard of care.

*Wandy v. River Valley Ventures Inc.* (2014), 2014 SKCA 81, 2014 CarswellSask 480, Caldwell J.A., Klebuc J.A., Whitmore J.A. (Sask. C.A.); affirming (2013), 428 Sask. R. 201, 2013 SKQB 309, 2013 CarswellSask 583, J.L.G. Pritchard J. (Sask. Q.B.) [Saskatchewan]

---

TOR.XVI.10.a.iii.B

**Subject Title: Torts**

**Classification Number: XVI.10.a.iii.B**

**Negligence -- Liability of owner or possessor of animals -- Injury by domestic animals -- Injury by dog -- Under by-law or statute**

Subject dog, which was owned by K and T, jumped up on plaintiff as she was walking with her son -- After incident, plaintiff had punctures to her buttock -- Plaintiff brought action against K and T under Dog Owners' Liability Act (Act) -- Action allowed -- Plaintiff was awarded $2,500 for general damages, plus prejudgment interest -- Based on strict liability provisions under Act, there was no alternative but to find K and T to be strictly liable for any damages resulting from bite or attack by subject dog -- K and T were owners of subject dog, and by operation of s. 2(2) of Act, this made them jointly and severally liable for damages claimed by plaintiff -- It was not proven that punctures to plaintiff's buttock were caused by dog bite because it was not proven that subject dog was not muzzled at time of incident -- T's evidence was that subject dog was wearing muzzle, and only plaintiff's son observed dog to be in position to counter T's evidence -- Plaintiff's son was not called to testify at trial, and any observation that son may have communicated to plaintiff were hearsay and not admissible into evidence -- Plaintiff's injuries were just as likely to have been caused by claws and paws of subject dog when dog jumped upon plaintiff -- There was no evidence of any stitches or other medical treatment given to plaintiff beyond injections she received to protect her from tetanus or rabies -- No reduction of damages was made under s. 2(3) of Act based on contributory negligence or fault on part of plaintiff -- There was no persuasive evidence that plaintiff's son excited subject dog to extent that it caused dog to jump up on plaintiff.

*Rai v. Flowers* (2014), 2014 ONSC 3792, 2014 CarswellOnt 8861, Emery J. (Ont. S.C.J.) [Ontario]

---