

# The Canadian Abridgment eDigests -- Torts

2006-7

February 13, 2006

D2.X.6.b.i

**Subject Title: Defamation**

**Classification Number: X.6.b.i**

**Practice -- Costs -- Award of costs -- General**

Plaintiff at relevant time was employee of United Nations working in Africa -- Plaintiff is now Canadian citizen and resident of Ontario -- Defendant newspaper was published in Washington, D.C. -- Personal defendants were reporters for newspaper and resided in three different states -- Plaintiff brought action for order directing newspaper to cease publication of impugned articles about his United Nations service published by defendant on its website, to publish retraction, and for damages -- Defendants unsuccessfully brought motion to set aside service ex juris and to stay action -- Plaintiff was awarded costs of motion on partial indemnity scale fixed in amount of \$7,500 -- Defendants successfully appealed and were awarded costs of appeal on partial indemnity scale fixed in amount of \$7,500 including disbursements and GST -- Defendants were also awarded their costs of motion on partial indemnity scale -- Parties were unable to agree on quantum of costs of motion -- Parties made submissions -- Defendants were awarded their costs fixed in amount of \$7,500 including disbursements and GST -- Case was first time court gave consideration to application of real and substantial connection test to jurisdiction in libel case -- Case involved matter of public interest and was of significant importance to publishing and broadcasting communities.

*Bangoura v. Washington Post* ([2005](#)), [2005 CarswellOnt 7304](#) (Ont. C.A.) [Ontario]; additional reasons to ([2005](#)), [258 D.L.R. \(4th\) 341](#), [17 C.P.C. \(6th\) 30](#), [\[2005\] O.J. No. 3849](#), [2005 CarswellOnt 4343](#) (Ont. C.A.); reversing ([2004](#)), [235 D.L.R. \(4th\) 564](#), [\[2004\] O.J. No. 284](#), [48 C.P.C. \(5th\) 318](#), [2004 CarswellOnt 340](#) (Ont. S.C.J.); additional reasons at ([2004](#)), [2004 CarswellOnt 675](#) (Ont. S.C.J.)

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F4.IV.1.c.ii

**Subject Title: Fraud and misrepresentation****Classification Number: IV.1.c.ii****Duress and undue influence -- Duress -- Economic duress -- Availability of defence or cause of action**

Employer supplied cellular telephone to employee -- Employer required employee to sign contract which stated that lost, broken or unreturned phones would become sole expense of employee -- Phone fell out of employee's pocket and was accidentally destroyed -- Employer deducted cost of phone from employee's final pay, but later paid it back to him when directed to do so by federal Industrial Relations Board -- Employer brought action against employee seeking cost of replacement phone -- Employee alleged contract was signed under duress -- Action allowed -- There was real, albeit reluctant consent, so duress defence had to fail -- Evidence was clear that when employee signed agreement he did not agree with it, but signed it anyway: employee considered his options, which were probably sign or be fired, and he chose to sign -- For pressure to vitiate consent, pressure must be illegitimate and amount to compulsion of will -- There was no evidence that employee could not readily obtain other employment -- Employee was truck driver, which was very marketable skill -- There was no evidence upon which it could be found that employee had no other practical alternative open to him -- As well, agreement only obligated him to possible cost of repair or replacement of cell phone which he estimated at couple of hundred dollars -- Employee acquiesced in agreement until it operated to his disadvantage: acknowledgment was signed in March 2004 and phone was damaged in December 2004.

*MacCosham Inc. v. Deck* ([2005](#)), [2005 CarswellAlta 1839](#), [2005 ABPC 352](#) (Alta. Prov. Ct.) [Alberta]

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N3.I.2.k

**Subject Title: Negligence****Classification Number: I.2.k****General principles -- Duty and standard of care -- Miscellaneous issues**

Plaintiff university student submitted, as appendix attached to term paper, case study of woman sexually abusing children -- Professor speculated it was personal confession -- Without further inquiry, director

of School of Social Work reported plaintiff to Child Protection Services (CPS) -- Plaintiff was "red-flagged" as potential child abuser but was cleared by CPS investigation two years later -- Plaintiff brought claim for damages in negligence against professor, director, and university -- Jury found that university's negligence had destroyed plaintiff's chosen career prospects and awarded her \$839,400 in damages -- Court of Appeal held that action was barred by s. 38(6) of Child Welfare Act and overturned jury award -- Appeal by plaintiff allowed -- Defendants acted on conjecture and speculation which fell far short of required "reasonable cause" under s. 38(6) to make report -- Plaintiff's claim in negligence encompassed university's dealings with her generally, which gave rise to duty of care -- Standard of care to be exercised by professors towards their students requires them to take necessary care to get their facts straight before taking potential career-ending action -- There was evidence that university breached these duties through negligence of its employees -- It was open to jury to conclude that behaviour of professor and director fell markedly short of standard of care professors should exercise.

*Bella v. Young* ([2006](#)), [2006 CarswellNfld 20](#), [2006 CarswellNfld 19](#), [2006 SCC 3](#) (S.C.C.) [Newfoundland & Labrador]; reversing ([2004](#)), [2004 CarswellNfld 300](#), [2004 NLCA 60](#), [8 C.P.C. \(6th\) 131](#), (sub nom. *Young v. Bella*) [716 A.P.R. 35](#), [241 Nfld. & P.E.I.R. 35](#) (N.L. C.A.)

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N3.I.3.b

**Subject Title: Negligence**

**Classification Number: I.3.b**

**General principles -- Causation -- Foreseeability and remoteness**

Defendant left pub at hotel and drove past right side of pick-up truck which was stopped on road, injuring four young people and driver of truck who were standing between truck and curb -- Injured plaintiffs brought actions against defendant and hotel -- Hotel alleged that plaintiffs caused or contributed to their loss by leaving safety of curb and remaining in path of defendants' car, failing to keep proper lookout for oncoming traffic, and consuming alcohol -- Defendant and hotel held equally liable -- Defendant was "grossly impaired" -- While plaintiffs had drunk some alcohol that evening, affecting their ability to react to danger, they were in midst of group of 15 to 40 people -- Defendant's reckless actions were such that even if plaintiffs had been sober, they could not have avoided entirely unforeseeable collision -- Pursuant to s. 179(1) of Motor Vehicle Act, driver of vehicle must yield right of way to pedestrian in crosswalk -- Plaintiffs did not leave place of safety in violation of s. 179(2), but were in unmarked crosswalk where they enjoyed right of way -- Plaintiffs did not contribute to cause of accident by being in road rather than on sidewalk; nor were they contributorily negligent for being in

road while inebriated and for not keeping proper lookout -- Degree of defendant's negligence was so great as to render it not reasonably foreseeable to plaintiffs -- Plaintiffs were not contributorily negligent for their injuries.

*Laface v. McWilliams* ([2005](#)), [29 C.C.L.T. \(3d\) 219](#), [14 M.V.R. \(5th\) 162](#), [2005 CarswellBC 519](#), [2005 BCSC 291](#) (B.C. S.C.) [British Columbia]; additional reasons at ([2005](#)), [2005 CarswellBC 3034](#), [2005 BCSC 1766](#) (B.C. S.C. [In Chambers])

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N3.II.4.b.iii

**Subject Title: Negligence**

**Classification Number: II.4.b.iii**

**Contributory negligence -- Proof of contributory negligence -- Duty of care -- Pedestrians**

Defendant left pub at hotel and drove past right side of pick-up truck which was stopped on road, injuring four young people and driver of truck who were standing between truck and curb -- Injured plaintiffs brought actions against defendant and hotel -- Hotel alleged that plaintiffs caused or contributed to their loss by leaving safety of curb and remaining in path of defendants' car, failing to keep proper lookout for oncoming traffic, and consuming alcohol -- Defendant and hotel held equally liable -- Defendant was "grossly impaired" -- While plaintiffs had drunk some alcohol that evening, affecting their ability to react to danger, they were in midst of group of 15 to 40 people -- Defendant's reckless actions were such that even if plaintiffs had been sober, they could not have avoided entirely unforeseeable collision -- Pursuant to s. 179(1) of Motor Vehicle Act, driver of vehicle must yield right of way to pedestrian in crosswalk -- Plaintiffs did not leave place of safety in violation of s. 179(2), but were in unmarked crosswalk where they enjoyed right of way -- Plaintiffs did not contribute to cause of accident by being in road rather than on sidewalk; nor were they contributorily negligent for being in road while inebriated and for not keeping proper lookout -- Degree of defendant's negligence was so great as to render it not reasonably foreseeable to plaintiffs -- Plaintiffs were not contributorily negligent for their injuries.

*Laface v. McWilliams* ([2005](#)), [29 C.C.L.T. \(3d\) 219](#), [14 M.V.R. \(5th\) 162](#), [2005 CarswellBC 519](#), [2005 BCSC 291](#) (B.C. S.C.) [British Columbia]; additional reasons at ([2005](#)), [2005 CarswellBC 3034](#), [2005 BCSC 1766](#) (B.C. S.C. [In Chambers])

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N3.VI.3.d

**Subject Title: Negligence**

**Classification Number: VI.3.d**

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

Defendant left pub at hotel and drove past right side of pick-up truck which was stopped on road, injuring four young people and driver of truck who were standing between truck and curb -- Injured plaintiffs brought actions against defendant and hotel, alleging that defendant was negligent in colliding with them and that hotel failed to comply with commercial host's responsibility to monitor his alcohol consumption and to ensure that he got home safely -- Defendant and hotel held equally liable -- Commercial providers owe duty to third parties who might reasonably be expected to come into contact with intoxicated patron, and to whom patron might pose risk -- Defendant was "grossly impaired" and demonstrated obvious signs of intoxication while in pub -- Hotel did not monitor his alcohol consumption and failed to meet standard of care required of licensed premises -- Witness who saw defendant at pub testified that he was "really, really drunk" and that she tried to find someone to drive his car -- Hotel had actual knowledge of defendant's drunken state and probability that unless it intervened, he would drive -- In circumstances when hotel knew or ought to have known of his intoxication and real risk that he might drive, it was obliged to prevent him from driving -- Hotel was negligent and its negligence was significant contributing cause of collision.

*Laface v. McWilliams* ([2005](#)), [29 C.C.L.T. \(3d\) 219](#), [14 M.V.R. \(5th\) 162](#), [2005 CarswellBC 519](#), [2005 BCSC 291](#) (B.C. S.C.) [British Columbia]; additional reasons at ([2005](#)), [2005 CarswellBC 3034](#), [2005 BCSC 1766](#) (B.C. S.C. [In Chambers])

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N3.VI.3.j

**Subject Title: Negligence**

**Classification Number: VI.3.j**

## **Occupiers' liability -- Particular situations -- Doors**

Plaintiff was returning home to apartment building after shopping with husband -- Plaintiff approached side door of building and unlocked door with bags in hand -- Plaintiff's husband asked plaintiff to hold door -- Plaintiff put down bags with back to door and reached out with hand to hold open door -- Door was equipped with closing device which caused it to shut quickly when not being held open -- Plaintiff's hand got caught in closing door and plaintiff suffered fractured and severed fingers -- Plaintiff brought action against defendant landlord for negligence -- Action dismissed -- Plaintiff failed to prove defendant had breached duty of care -- Plaintiff was familiar with operation of door during two and a half months of living at apartment and using door regularly -- Reasonable adult in circumstances would have known there was inherent risk in sticking out hand to stop fast moving door from closing when back was turned -- Although door closed quickly and with some degree of force, it was everyday risk or exigency that did not require special measures on part of defendant -- Fact there were no pre-existing complaints about door closing mechanism weighed in favour of defendant.

*Lavalee v. Bristol Management* ([2005](#)), [2005 CarswellBC 2853](#), [2005 BCSC 1666](#) (B.C. S.C.) [British Columbia]

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N3.VIII.6.f.viii

**Subject Title: Negligence**

**Classification Number: VIII.6.f.viii**

**Practice and procedure -- Trials -- Grounds for appeal -- Miscellaneous issues**

Damages -- Plaintiff university student submitted, as appendix attached to term paper, case study of woman sexually abusing children -- Professor speculated it was personal confession -- Without further inquiry, director of School of Social Work reported plaintiff to Child Protection Services (CPS) -- Plaintiff was "red-flagged" as potential child abuser but was cleared by CPS investigation two years later -- Plaintiff brought claim for damages in negligence against professor, director, and university -- Jury found that university's negligence had destroyed plaintiff's chosen career prospects and awarded her \$839,400 in damages -- Court of Appeal held that action was barred by s. 38(6) of Child Welfare Act and overturned jury award -- Appeal by plaintiff allowed -- Defendants acted on conjecture and speculation which fell far short of required "reasonable cause" under s. 38(6) to make report -- Possibility of suing in defamation does not negate availability of cause of action in negligence where necessary elements are made out -- Evidence at trial supported jury's finding of negligence and factual

underpinnings of plaintiff's claim to damages -- There was sufficient evidence to permit jury to find causal connection between university's breach of duty and damages suffered by plaintiff -- It was open to jury on evidence to conclude that professors' collective negligence destroyed plaintiff's career prospects as social worker and to assess damages accordingly.

*Bella v. Young* ([2006](#)), [2006 CarswellNfld 20](#), [2006 CarswellNfld 19](#), [2006 SCC 3](#) (S.C.C.) [Newfoundland & Labrador]; reversing ([2004](#)), [2004 CarswellNfld 300](#), [2004 NLCA 60](#), [8 C.P.C. \(6th\) 131](#), (sub nom. *Young v. Bella*) [716 A.P.R. 35](#), [241 Nfld. & P.E.I.R. 35](#) (N.L. C.A.)

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T4.XIV

**Subject Title: Torts**

**Classification Number: XIV**

**Intentional infliction of mental suffering**

Plaintiff employee was employed by county for 12 years and was re-assigned to position of manager for Non-Profit Housing Project -- Employee and wife were support persons for church friend, a convicted paedophile who was released on parole into their supervision -- Offender lived at employee's residence and was required to be accompanied by employee or wife when leaving residence -- Employee helped offender obtain applications for subsidized housing at non-profit corporation and accompanied him to meeting with property manager -- Offender met all eligibility requirements but property manager became concerned when she saw letter, prepared by offender, regarding his criminal record and parole restrictions -- Employee's supervisor learned that employee, given his employment position, might have acted in conflict of interest by helping offender apply for vacancy -- Employee was ultimately terminated -- Employee brought action for damages for wrongful dismissal -- Action allowed -- Content of report relied on to terminate employee was fundamentally false -- Employee entitled to additional damages by way of Wallace bump up -- Report and letter of termination were intended to maximize personal and economic damage -- Conduct of supervisor before and after termination, including actively informing prospective employers about circumstances of employee's termination, showed intention to destroy employee personally and professionally -- Conduct of employer caused humiliation, embarrassment, and damage to self-esteem -- Intangible damage flowing from wrongful actions of employer were assessed at \$50,000 -- Damage to employee's physical and mental health, recoverable under Wallace and under tort of wrongful infliction of mental suffering, was assessed at \$20,000.

*Downham v. Lennox & Addington (County)* ([2005](#)), [2005 CarswellOnt 7034](#) (Ont. S.C.J.) [Ontario]

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T4.XIV

**Subject Title: Torts**

**Classification Number: XIV**

**Intentional infliction of mental suffering**

Plaintiff had multiple sclerosis and obtained medicinal marijuana under s. 56 of Controlled Drugs and Substances Act -- Amendments to Marijuana Medical Access Regulations required user to obtain approval from specialist -- Plaintiffs had difficulty obtaining approval for renewal of exemption -- Plaintiffs brought action against Crown in Right of Canada and Minister of Health for breach of fiduciary duty, defamation, invasion of privacy, abuse of public office, and infliction of nervous shock -- Defendants moved to strike writ of summons and statement of claim for failure to disclose reasonable cause of action -- Chambers judge struck, inter alia, paragraph of statement of claim alleging infliction of nervous shock as disclosing no cause of action -- Plaintiff appealed -- Appeal allowed in part -- Chambers judge found that claim for intentional infliction of nervous shock is founded in negligence and that pleadings did not disclose any tortious conduct of which it could be said that nervous shock, or psychological or psychiatric condition, was foreseeable result -- Reasons did not foreclose any proper claim for extra compensatory damages, or even punitive damages, in claim for defamation -- Chambers judge overlooked fact that paragraph alleging infliction of nervous shock was linked to events said to be defamation and allegation of intended harm, which necessarily encompassed allegation he found to be missing -- It was not clear and obvious that claim for damages for infliction of nervous shock could not succeed.

*Young v. McLellan* (2005), [2005 CarswellBC 2842](#), [2005 BCCA 563](#) (B.C. C.A.) [British Columbia]; reversing in part [\(2004\)](#), [2004 BCSC 995](#), [2004 CarswellBC 1729](#) (B.C. S.C. [In Chambers])

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T4.XV

**Subject Title: Torts**

**Classification Number: XV**

**Miscellaneous torts**

Deceit.

*Downham v. Lennox & Addington (County)* ([2005](#)), [2005 CarswellOnt 7034](#) (Ont. S.C.J.) [Ontario]

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