

# The Canadian Abridgment eDigests -- Remedies

2009-47  
November 23, 2009

REM.I.5.a.i.A.13

**Subject Title: Remedies**

**Classification Number: I.5.a.i.A.13**

**Damages -- Damages in tort -- Personal injury -- Special damages (pre-trial pecuniary loss) -- Expenditures -- Multiple expenses considered**

Defendant driver failed to stop at stop sign and hit vehicle driven by plaintiff -- Plaintiff suffered extensive injuries to her lower right leg and ankle -- Plaintiff was hospitalized for several weeks and had two operations to repair damage -- Plaintiff was awarded special damages of \$41,288 less \$6,716.99 -- \$6,716.99 was recoverable from plaintiff's insurer -- Plaintiff was awarded \$20,000 for cost of future physiotherapy -- In future plaintiff was likely to require physiotherapy less often than once per week -- Life expectancy of plaintiff aged 65 at time of accident was calculated at additional 18 years -- Plaintiff was awarded \$2,000 for home exercise equipment -- Plaintiff was awarded \$9,288 for orthotics -- Plaintiff was awarded \$10,000 for replacement of homemaking services -- After plaintiff reached age 75 she would likely have obtained assistance with homemaking.

*Melanson v. Steen* ([2009](#)), [345 N.B.R. \(2d\) 262](#), [889 A.P.R. 262](#), [2009 CarswellNB 302](#), [2009 NBQB 176](#), H.H. McLellan J. (N.B. Q.B.) [New Brunswick]

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REM.I.5.a.ii.B.4

**Subject Title: Remedies**

**Classification Number: I.5.a.ii.B.4**

**Damages -- Damages in tort -- Personal injury -- Principles relating to awards of general damages**

## -- Motor vehicle accidents -- Chronic pain or permanent incapacity

Defendant driver failed to stop at stop sign and hit vehicle driven by plaintiff -- Plaintiff suffered extensive injuries to her lower right leg and ankle -- Plaintiff was hospitalized for several weeks and had two operations to repair damage -- Prior to accident plaintiff was physically active 65-year-old woman who walked miles each day -- But for accident plaintiff's future quality of life would have been very good -- Plaintiff was awarded general damages of \$70,000 -- It was unlikely that plaintiff would regain her pre-accident state of health -- Plaintiff would likely suffer osteoarthritis as result of injury -- Due to nature of injury ankle fusion was real possibility -- While hospitalized plaintiff picked up infection that was not cured for several months -- Plaintiff suffered substantial limitations on her activity level due to accident.

*Melanson v. Steen* ([2009](#)), [345 N.B.R. \(2d\) 262](#), [889 A.P.R. 262](#), [2009 CarswellNB 302](#), [2009 NBQB 176](#), H.H. McLellan J. (N.B. Q.B.) [New Brunswick]

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REM.I.5.a.ii.G

**Subject Title: Remedies**

**Classification Number: I.5.a.ii.G**

**Damages -- Damages in tort -- Personal injury -- Principles relating to awards of general damages -- Miscellaneous**

Nuisance and strict liability -- Plaintiffs owned real property which was supplied with water from well which received its water supply from two aquifers -- Parties entered into contract whereby defendants could construct sour gas drilling well on plaintiff's property, next to land where plaintiffs intended to have subdivision built -- Defendants dug open pits and caused drilling by-products including mud used in drilling to be placed in pits, without first acquiring or building holding tanks -- Defendants' conduct caused contamination of plaintiffs' well water -- Plaintiffs suffered mild symptoms, including diarrhoea, some mouth sores and bladder infections, which generally resolved quickly, within a few weeks -- One plaintiff had collapse due to chest pains, and was hospitalized and investigated for heart problems -- That plaintiff was ultimately diagnosed as having esophageal problem, inflammation of esophagus at entrance to stomach -- Plaintiffs' action was allowed -- Plaintiffs were each entitled to general damage award of \$1,000 for personal injuries sustained from contamination of well -- With respect to esophageal problem, plaintiff did not prove that defendants' actions were responsible for its emergence as medical data indicated that it may have been preexisting condition.

*Blatz v. Impact Energy Inc.* ([2009](#)), [2009 ABQB 506](#), [2009 CarswellAlta 1369](#), R.E. Nation J. (Alta. Q. B.) [Alberta]

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REM.I.5.d.i.E

**Subject Title: Remedies**

**Classification Number: I.5.d.i.E**

**Damages -- Damages in tort -- Real property -- Nature of unlawful act -- Environmental pollution and contamination**

Contamination of well water -- Plaintiffs owned real property which was supplied with water from well which received its water supply from two aquifers -- Parties entered into contract whereby defendants could construct sour gas drilling well on plaintiff's property -- Defendants dug open pits and caused drilling by-products including mud used in drilling to be placed in pits, without first acquiring or building holding tanks -- Drilling by-products caused contamination of plaintiffs' well water -- Plaintiffs' action for damages was allowed -- As clear and foreseeable result of defendants' conduct, plaintiffs were required to drill new well -- Award of \$30,000 was appropriate to cover new well drilling costs.

*Blatz v. Impact Energy Inc.* ([2009](#)), [2009 ABQB 506](#), [2009 CarswellAlta 1369](#), R.E. Nation J. (Alta. Q. B.) [Alberta]

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REM.I.6.c.vi

**Subject Title: Remedies**

**Classification Number: I.6.c.vi**

**Damages -- Valuation of damages -- Measure of damages -- Miscellaneous**

Defendants drilled gas well on plaintiffs' real property -- Defendants used open pits to store drilling by-products -- By-products caused contamination of plaintiffs' well -- Plaintiff B was required to lose time from work dealing with well-water problems -- It was fair on evidence to compensate B at rate he was paid, \$20 an hour, for time spent dealing with problems to well caused by defendants -- Damages for lost wages were assessed at \$4,000 calculated at \$20 an hour for 200 hours.

*Blatz v. Impact Energy Inc.* ([2009](#)), [2009 ABQB 506](#), [2009 CarswellAlta 1369](#), R.E. Nation J. (Alta. Q. B.) [Alberta]

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REM.I.6.e

**Subject Title: Remedies**

**Classification Number: I.6.e**

**Damages -- Valuation of damages -- Where ascertainment difficult**

Defendants drilled gas well on plaintiffs' real property -- Defendants used open pits to store drilling by-products -- By-products caused contamination of plaintiffs' well -- Plaintiffs sold their cattle herd, allegedly at discount price -- Plaintiffs were not entitled to award of damages related to sale of cattle -- Plaintiffs were required to prove that sale of herd was causally related to defendants' actions in contaminating well water -- Plaintiffs did not meet burden of proof of causation and damages could not be awarded.

*Blatz v. Impact Energy Inc.* ([2009](#)), [2009 ABQB 506](#), [2009 CarswellAlta 1369](#), R.E. Nation J. (Alta. Q. B.) [Alberta]

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REM.I.7.c.x

**Subject Title: Remedies**

**Classification Number: I.7.c.x**

## **Damages -- Exemplary, punitive and aggravated damages -- Grounds for awarding exemplary, punitive and aggravated damages -- Miscellaneous**

Nuisance -- Defendants drilled gas well on plaintiffs' real property -- Defendants used open pits to store drilling by-products -- By-products caused contamination of plaintiffs' well, causing them personal injuries and requiring drilling of new well -- A few days passed between initial testing of well found elevated levels of contaminants and time at which defendants began to supply plaintiffs with alternate source of drinking water -- Plaintiffs' action in nuisance, under rule in *Rylands v. Fletcher* and for breach of contract was allowed -- Plaintiffs were not entitled to award of punitive damages -- Plaintiffs were required to show outrageous or high-handed conduct on part of defendants before punitive damage award could follow -- In present case, neither defendants' drilling conduct itself nor delay in providing alternate water supply was sufficiently outrageous as to justify punitive damages.

*Blatz v. Impact Energy Inc.* (2009), 2009 ABQB 506, 2009 CarswellAlta 1369, R.E. Nation J. (Alta. Q. B.) [Alberta]

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REM.II.1.d.i

**Subject Title: Remedies**

**Classification Number: II.1.d.i**

## **Injunctions -- Rules governing injunctions -- Interlocutory, interim and permanent injunctions -- General principles**

Licensees operated fitness camp -- Licensees did not agree to terms of renewal of licenses, and gave up licenses -- Licensees began own fitness instruction program -- Licensor brought motion for interlocutory injunction preventing operation of program -- Motion dismissed -- No serious issue for trial existed -- Information which licensor claimed was confidential was in fact easily accessible from public sources, and compilation of information as whole was product of plaintiff's skill and ingenuity -- Use of posters, permits, and waivers was not use of confidential information -- No irreparable harm would occur if injunction not granted.

*Booty Camp Fitness Inc. v. Jackson* (2009), 2009 CarswellOnt 4354, J.A. Thorburn J. (Ont. S.C.J.) [Ontario]

REM.II.2.b.ii.A.4

**Subject Title: Remedies**

**Classification Number: II.2.b.ii.A.4**

**Injunctions -- Availability of injunctions -- Prohibitive injunctions -- Interim and interlocutory injunctions -- Threshold test -- Miscellaneous**

B won request for proposal (RFP) to design/build, own and operate power co-generation facility to power casino expansion -- At time of RFP, both sides reasonably expected that agreements would be finalized and executed -- Design/build agreement was executed but ownership and operation agreements were not -- B built facility and acted as de facto interim operator under letter of intent (LOI) -- LOI was to be incorporated into formal agreement but never was -- After LOI expired, owner, OLG, wanted B to vacate premises and made arrangement with another contractor -- B initiated action against OLG -- B brought motion for interlocutory relief -- Motion dismissed -- Present value of lost chance to finalize agreements and make X profits over Y years of ownership and operation is not easily calculated, but can be reasonably estimated and presented as damages claim -- This was lost opportunity case, not case where party was alleging wrongful termination of existing contract.

*Buttcon Energy Inc. v. Ontario Lottery & Gaming Corp.* (2009), 2009 CarswellOnt 5278, Edward Belobaba J. (Ont. S.C.J.) [Ontario]

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REM.II.2.f.i.C

**Subject Title: Remedies**

**Classification Number: II.2.f.i.C**

**Injunctions -- Availability of injunctions -- Injunctions in specific contexts -- Nuisance -- Interference with enjoyment of private property**

Civic employees including garbage collectors were on strike -- Residents illegally dumped garbage during strike along fence of City property -- Picketers prevented removal of garbage ordered by City's Medical Officer of Health -- City applied for injunction preventing interference with execution of order -- Application granted -- Actions of picketers constituted tort of private nuisance -- It was unreasonable to prevent City from entering upon its property to remove garbage -- It was not necessary to prove irreparable harm where illegal acts are committed -- Risk to public health was, however, harm that could not be compensated in damages -- Balance of convenience strongly favoured granting of injunction -- City did not seek to limit or restrict picketing -- There was no reason to believe City could have obtained approval for spraying of garbage as alternative to removal.

*Toronto (City) v. Toronto Civic Employees Union, Local 416* (2009), 2009 CarswellOnt 5136, H.J. Wilton-Siegel J. (Ont. S.C.J.) [Ontario]

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REM.II.2.f.vi.A

**Subject Title: Remedies**

**Classification Number: II.2.f.vi.A**

**Injunctions -- Availability of injunctions -- Injunctions in specific contexts -- Restrictive covenants -- Employment contract**

Plaintiff was in business of oil rig moving supervision, and was under contract to C, its primary customer -- Defendants were employed as subcontractor to plaintiff -- Subcontractor's agreement contained restrictive covenants -- Defendants entered into direct contract with C -- Plaintiff brought application for interlocutory injunction restraining defendants from competing in relation to C, soliciting business from C, or misusing or misappropriating confidential and proprietary information -- Application dismissed -- Work of defendants was not dependent on sensitive or confidential information but, rather, required skill, judgment and expertise -- Plaintiff itself was in breach of agreement, and may not have had any claim for contractual, legal, or equitable set off -- Non-competition clause related to rig moving supervision, but defendants' current role related to directing whole oilfield strategy -- Non-competition clause did not apply to C, and instead referred to company with which C amalgamated -- Defendants did not solicit work; offer was made by C -- Plaintiff did not produce strong prima facie case that defendants did anything inappropriate respecting confidential information that would justify injunction -- Imposing significant non-competition clause represented fundamental change in existing contractual relationship, and agreements were arguably void for want of consideration -- Clauses were generally unenforceable as restraint of trade -- Defendants could not be restrained from utilizing pre-

existing contacts with C -- Clauses were very broad and did not contain reasonable limits -- There was no claim based on fiduciary arguments, and no claim based on duty of fidelity -- Harm to plaintiff could be relatively minimal -- Defendants were not seeking to take all of work, and plaintiff was not even losing all of work from C -- Plaintiff could point to no specific information that defendants had that could hurt plaintiff -- Defendants, however, could lose up to 90 per cent of income if injunction was granted, and there could be impact to defendants' ability to get work elsewhere.

*Altam Holdings Ltd. v. Lazette* ([2009](#)), [2009 CarswellAlta 1143](#), [2009 ABQB 458](#), Donald Lee J. (Alta. Q.B.); additional reasons at ([2009](#)), [2009 ABQB 521](#), [2009 CarswellAlta 1382](#), Donald Lee J. (Alta. Q. B.) [Alberta]



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