

The Canadian Abridgment eDigests -- Motor Vehicles

2013-6
February 11, 2013

MOT.II.1.g

Subject Title: Motor vehicles

Classification Number: II.1.g

Constitutional issues -- Conflict with federal legislation -- Licence suspension

In 1989, uninsured, at-fault driver was involved in car accident -- In 1996, province obtained judgment against driver for \$194,875 -- Driver filed for bankruptcy under Bankruptcy and Insolvency Act (BIA) in 2008 and received absolute discharge in 2011 -- Province notified driver that licence and registration would be suspended indefinitely pursuant to Traffic Safety Act (TSA) -- Driver brought application for order staying enforcement of judgment and suspensions -- Application granted -- Province was not permitted to use s. 102 of TSA to enforce unsatisfied judgment against driver after driver made assignment into bankruptcy -- Other than claims specifically identified in s. 178(1) of BIA, order of discharge under s. 178(2) of BIA released bankrupt from all claims provable in bankruptcy, and s. 70(1) of BIA provided that bankruptcy order or assignment took precedence over all judicial or other attachments, garnishments or judgments -- While underlying debt was not per se extinguished, province's ability to enforce its judgment was -- Permitting creditors to avail themselves of remedies that were only available if debt survived bankruptcy would defeat fresh start principle -- Province was seeking to make laws to its advantage and ignore fundamental premise of giving bankrupt creditors fresh start -- There was no question TSA and BIA were validly enacted and existed harmoniously in their separate spheres -- Province's actions were not disciplinary measures but method of debt collection, and colourable attempt to circumvent provisions of BIA -- Under doctrine of paramountcy, to extent of inconsistency, province's actions were ineffective -- Moreover, phrase "other than by discharge in bankruptcy" in s. 102(2) of TSA was to be interpreted as suggesting that bankruptcy discharge did not constitute discharge within meaning of s. 102(2) of TSA -- Specific language in s. 102(2) referencing bankruptcy scenario directly offended powers of Parliament, and engaged doctrine of paramountcy.

Moloney v.
Alberta
(Administrator, Motor
Vehicle Accident Claims
Act) [\(2012\), 2012 ABQB 644, 2012 CarswellAlta 1757](#), A.B. Moen J.. (Alta. Q.B.) [Alberta]

MOT.IX.7

Subject Title: Motor vehicles

Classification Number: IX.7

Civil liability of owner -- Right to indemnity

Insured's vehicle damaged culvert owned by province -- Province repaired culvert and sent invoice to

insured's insurer for \$669.40 for direct costs of repairing culvert as well as 10 per cent administration fee of \$66.94 -- Insurer refused to pay \$66.94 -- Province brought successful application to recover \$66.94 -- Motion judge found that province satisfied court that \$66.94 represented reasonable overhead costs which were not arbitrary or artificial and did not represent markup for profit, that charge was based in recovering costs associated with staff processing transaction through province's financial system, and that \$66.94 fee in this case was reasonable overhead charge related to particular claim -- Insurer appealed -- Appeal dismissed -- Although there was no evidence led to explain and justify basis upon which province as matter of policy chose 10 per cent as administration fee to be added to every claim following third-party damage to its property, on unique facts of case, result should not be reversed -- Motion judge's factual findings and inferences fell within range that reasonable court could make and ought not to be disturbed -- Motion judge's findings were fully supported and were in no way result of palpable and overriding error -- Overhead expenses were recoverable as part of cost of effecting repairs to one's damaged property -- What saved case from reversal was evidence that certain specific administrative tasks not otherwise budgeted, were in fact undertaken on account of insured's negligence and that administration fee was levied to off-set those overhead expenditures which were added expense -- In view of motions judge's findings, it was perfectly reasonable to infer that expense of \$66.94 was actually incurred in having to oblige staff to do things described as part of processing this third-party claim -- While this particular situation did not call for further evidence as to why province chose 10 per cent, outcome may well have been different had amount of third-party damage been greater.

Nova Scotia

(Attorney General)

v. Jacques Home Town

Dry Cleaners

(2013), 2013 NSCA 4, 2013 CarswellNS 1, Fichaud J.A., Oland J.A., Saunders J.A. (N.S. C.A.); affirming (2012), 313 N.S.R. (2d) 294, 990 A.P.R. 294, 2012 NSSC 42, 2012 CarswellNS 107, M. Heather Robertson J. (N.S. S.C.) [Nova Scotia]

MOT.X.2.e.ii

Subject Title: Motor vehicles

Classification Number: X.2.e.ii

Offences and penalties -- Prosecutions -- Appeals -- Procedure on appeal

Leave to extend time to appeal.

R. v. Akimovs

R. Boivin J. (Ont. C.J.) [Ontario]

(2012), 2012 CarswellOnt 16167, [2012] O.J. No. 6205,

MOT.XIII

Subject Title: Motor vehicles

Classification Number: XIII

Miscellaneous

Defendant driver was operating motor vehicle within parking lot of M Ltd., when she lost control of vehicle and collided with side of restaurant, causing property damage -- M Ltd. successfully brought action against defendant driver and insurance company based on claim for property damage and business interruption losses in amount of \$25,000, arising out of motor vehicle accident -- Parties made submissions regarding costs -- Costs awarded -- M Ltd. awarded costs in total amount of \$7,770.65 (i.e., \$6,782.02 plus disbursements of \$988.63) -- M Ltd. obtained judgment that was more favourable than written offer to settle in amount of \$13,000 dated February 24, 2011, which offer was made at least seven days before trial, was not withdrawn and did not expire before trial -- M Ltd.'s written offer to settle therefore complied with R. 14.07 of Small Claims Court Rules -- Accordingly, M Ltd. were entitled to award of costs, other than disbursements, of up to 30 per cent of value of recovery at trial.

*McDonald's Restaurants
of Canada Ltd. v. Harrison*

[\(2012\), 2012 CarswellOnt 14825](#), David W. Black D.J. (Ont. S.C.J.); additional reasons to [\(2012\), 2012 CarswellOnt 12675](#), David W. Black D.J. (Ont. S.C.J.) [Ontario]

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