

## The Canadian Abridgment eDigests -- Torts

2012-44  
October 29, 2012

TOR.III.1.a

**Subject Title: Torts**

**Classification Number: III.1.a**

**Conspiracy -- Nature and elements of tort -- General principles**

Respondent insurance broker retained defendant salespersons AM and PD in 2005 as independent contractors -- Broker first met with AM and showed him spreadsheet with example commission calculations -- AM never signed broker's standard form agreement, but AM worked based on oral agreement on commission split and 50/50 shared equity interest with broker in his "book of business", i.e. his insurance clients -- PD brought his own book of business, never signed standard form agreement, but worked based on 50/50 shared commission -- AM and PD left on same day in January 2009, without notice, taking their books of business with them -- Trial judge allowed broker's action for breach of contract, misuse of confidential information, intentional interference with economic relations and unjust enrichment -- Trial judge found broker and AM had agreed to be bound by terms in spreadsheet examples from first meeting, including commission structure and 50/50 equity split with termination buyout at two times commission -- AM and PD appealed -- Appeal allowed -- Trial judge erred in finding PD liable -- PD owned his book of business and was entitled to leave without notice -- Trial judge made no finding of unlawful conduct by PD or that his purpose in leaving was to harm broker.

*Gentech Insurance Ltd.*

*v. Martina*

[\(2012\)](#), [2012 CarswellOnt 11243](#), [2012 ONCA 605](#), E. Ducharme J.A.,

K. Feldman J.A., Robert J. Sharpe J.A. (Ont. C.A.); reversing in part [\(2011\)](#), [3 C.C.L.I. \(5th\) 111](#), [2011 ONSC 5904](#), [2011 CarswellOnt 10610](#), Stinson J. (Ont. S.C.J.) [Ontario]

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TOR.V.5.a.v

**Subject Title: Torts**

**Classification Number: V.5.a.v**

**Defamation -- Privilege -- Absolute privilege -- Miscellaneous**

Plaintiff was former Member of Parliament and former Minister of State for Status of Women -- Prime Minister removed plaintiff from caucus, from position as minister and as candidate for Conservative Party of Canada (CPC) on grounds of unlawful and/or criminal conduct -- Plaintiff argued that Prime Minister, chief of staff and principal secretary engaged in conversations and communications that were defamatory to plaintiff -- Plaintiff brought action for defamation, conspiracy and other torts against defendant Prime Minister and CPC, and others -- Defendants brought motion to strike statement of claim, and issue arose as to absolute privilege -- Absolute privilege was accorded to communications within executive branch of government when statement was made by high officer of state to another officer of state; communications related to state matters; and communication was made by officer of state in course of official duty -- Alleged defamatory comments

made between Prime Minister and senior advisors fell squarely within absolute privilege.

*Guergis v. Novak* [\(2012\), 2012 ONSC 4579, 2012 CarswellOnt 10363](#), Charles T. Hackland R.S.J. (Ont. S.C.J.) [Ontario]

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TOR.V.9.b.vii

**Subject Title: Torts**

**Classification Number: V.9.b.vii**

**Defamation -- Practice and procedure -- Pleadings -- Pleading publication**

Improper to plead other torts together with defamation when only damages arose from allegedly defamatory words.

*Guergis v. Novak* [\(2012\), 2012 ONSC 4579, 2012 CarswellOnt 10363](#), Charles T. Hackland R.S.J. (Ont. S.C.J.) [Ontario]

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TOR.V.9.f.ii.C

**Subject Title: Torts**

**Classification Number: V.9.f.ii.C**

**Defamation -- Practice and procedure -- Costs -- Award of costs -- Miscellaneous**

Plaintiff brought action in defamation, alleging that defendants published defamatory statement on website -- Defendants brought successful application for summary judgment -- Hearing on costs was held -- Defendants were awarded costs of \$9,500 plus disbursements -- Defendants' pleading was in compliance with Supreme Court Civil Rules -- Even if pleading was imperfect or less than optimal, defendants' conduct was not of sort that warranted court's rebuke -- Defendants' offer to settle was not nominal -- Offer was straightforward and easily evaluated -- Offer was made months before summary trial, giving plaintiff time to investigate and evaluate claim -- Offer ought to have reasonably been accepted.

*Gichuru v. Pallai* [\(2012\), 2012 CarswellBC 2713, 2012 BCSC 1316](#), Ross J. (B.C. S.C.); additional reasons to [\(2012\), \[2012\] B.C.J. No. 949, 2012 BCSC 693, 2012 CarswellBC 1384](#), Ross J. (B.C. S.C.) [British Columbia]

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TOR.VII.1.f

**Subject Title: Torts**

**Classification Number: VII.1.f**

**Fraud and misrepresentation -- Fraudulent misrepresentation -- Miscellaneous**

Applicant and respondents were clients of lawyer -- Respondents were beneficiaries of family trusts that lawyer was asked to look after -- Lawyer used some of money for lawyer's own purposes and placed rest in speculative and poor investments -- Lawyer advised respondents lawyer placed money in GIC -- Lawyer obtained \$450,000 from applicant fraudulently -- Lawyer gave respondents money lawyer received from applicant -- Applicant sought return of \$450,000 from respondents -- Action was dismissed -- Respondents did not know or should have known money respondents received was obtained by lawyer through fraud -- Reasonable person would not conclude some other party had been defrauded by someone who had been trusted adviser and friend or to so strongly suspect it that there was legal duty to inquire if it were so -- There was no duty to inquire -- There was no trust or constructive trust -- No liability could attach to respondents for anything learned at time subsequent to delivery of cheques.

*Sarhan v. Chojnacki*

[\(2012\), 2012 CarswellOnt 1356,](#)

[2012 ONSC 747](#), Lederer J. (Ont. S.C.J.) [Ontario]

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TOR.VII.3.a.i

**Subject Title: Torts**

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

**Fraud and misrepresentation -- Negligent misrepresentation (Hedley Byrne principle) -- Nature and extent of duty of care -- General principles**

P. was driver of motor vehicle damaged in collision -- Vehicle was owned by G.G. and was insured by defendant -- P. authorized plaintiff to do repairs -- Plaintiff billed defendant for repairs -- Defendant paid lower hourly rate indicated by adjuster -- Plaintiff claimed amount left unpaid -- There was no written estimate -- Claim was dismissed -- P.'s assignment was valid and enforceable -- Defendant was deemed to have conceded point by paying bill in part -- Written estimate and authorization requirements were additive mandatory requirements -- Compliance with both statutory requirements of Consumer Protection Act, 2002 (Ont.), was essential -- Act did not apply -- Person who entered repair contract with plaintiff was not consumer as defined in Act -- Repair transaction was business transaction that involved named insured corporate owner of vehicle -- P. was acting for business purpose in authorizing repairs -- Repair service agreement as against defendant was not unenforceable -- Defendant met indemnification obligation under insurance contract -- Indemnification was for cost of repair -- Relationship between named insured and defendant was contractual, and not governed by duty of care in tort -- Defendant did not induce named or unnamed insured to breach repair contract -- Defendant did not negligently misrepresent labour costs of repair.

*1218897 Ontario Ltd.*

*v. Dominion of Canada*

[\(2012\), 2012](#)

[CarswellOnt 4279](#), Ferranti D.J. (Ont. S.C.J.) [Ontario]

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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**

Betterment -- Small Claims Court Adjudicator found appellants had made negligent misrepresentation as to seriousness of water infiltration into basement of property they sold to respondents in June 2009 -- Appeal was dismissed -- Adjudicator understood and correctly applied law of negligent misrepresentation to facts he found in this case -- No reason for appellate intervention. Decision at 207 A.C.W.S. (3d) 589 was affirmed.

*MacDonald v. Barbour*

[\(2012\), 2012 NSSC 102,](#)

[2012 CarswellNS 156](#), M. Heather Robertson J. (N.S. S.C.) [Nova Scotia]

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TOR.VII.5.b.iii

**Subject Title: Torts**

**Classification Number: VII.5.b.iii**

**Fraud and misrepresentation -- Remedies -- Rescission -- Miscellaneous**

Plaintiff would purchase used vehicles in Ontario and drive them to Saskatchewan and later sell vehicle in Saskatchewan at profit -- Defendant was used motor vehicle dealer -- Plaintiff purchased motor vehicle from defendant -- Defendant acquired vehicle day before from another dealer -- Plaintiff claimed rescission, damages in excess of \$10,000 plus punitive damages for fraud -- Vehicle was sold as is -- Vehicle was not safety certified or mechanically inspected on behalf of defendant -- After purchase plaintiff realized odometer was tracking in miles -- Plaintiff claimed negligent and fraudulent misrepresentation -- Plaintiff was to deliver vehicle to defendant in substantially same condition vehicle was in on specified date with with kilometres no higher than specified -- Defendant was to give plaintiff on delivery certified cheque of \$7,472 -- Number of kilometres vehicle travelled was of paramount importance to plaintiff -- Defendant was unaware odometer was tracking in miles -- So far as claim was based on mechanical condition of vehicle claim could not succeed -- Consumer Protection Act, 2002 (Ont.), did not apply because plaintiff was acting for business purpose -- Evidence of conversation between parties did not disclose assurances by defendant about specific mechanical characteristic of vehicle.

*Bowen v. Parkrow Auto*

*Sales Ltd.*

[\(2012\), 2012 CarswellOnt 3813](#), J.D. Searle D.J. (Ont. Small Cl.

Ct.) [Ontario]

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TOR.VII.5.b.iii

**Subject Title: Torts**

**Classification Number: VII.5.b.iii**

## Fraud and misrepresentation -- Remedies -- Rescission -- Miscellaneous

Parties settled litigation between them -- Plaintiff contended that defendant repudiated settlement agreement -- Plaintiff brought action for failure to supply goods as promised, and for costs of repairing premises leased to defendant and repairing environmental harm from hazardous substances discovered outside premises -- Defendant brought motion for summary judgment to dismiss action -- Motion granted -- Plaintiff claimed rescission of settlement agreement based on misrepresentation and alleged failure of defendant to perform its obligations under lease to notify plaintiff of hazardous substances on property -- However, assuming defendant's silence was misrepresentation of existing fact, representation was not made with intention that plaintiff should act on it in order to enter into settlement agreement -- Representation did not induce plaintiff to enter into settlement agreement, and plaintiff did not rely on representation as inducement to enter into settlement agreement -- After its own inspection of premises, plaintiff agreed to settle its damages claims against defendant.

*Zafir Holdings Inc.*

*v. Kingspan Insulated*

*Panels Ltd.*

(2012), 2012 ONSC 3329, 2012 CarswellOnt 9295, Perell J. (Ont. S.C.J.); additional reasons at (2012), 2012 CarswellOnt 9286, 2012 ONSC 4298, Perell J. (Ont. S.C.J.) [Ontario]

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TOR.X.1.d

**Subject Title: Torts**

**Classification Number: X.1.d**

### Interference with contractual relations -- Elements of tort -- Breach of existing contract

Respondent insurance broker retained defendant salespersons AM and PD in 2005 as independent contractors -- Broker first met with AM and showed him spreadsheet with example commission calculations -- AM never signed broker's standard form agreement, but AM worked based on oral agreement on commission split and 50/50 shared equity interest with broker in his "book of business", i.e. his insurance clients -- PD brought his own book of business, never signed standard form agreement, but worked based on 50/50 shared commission -- AM and PD left on same day in January 2009, without notice, taking their books of business with them -- Trial judge allowed broker's action for breach of contract, misuse of confidential information, intentional interference with economic relations and unjust enrichment -- Trial judge found broker and AM had agreed to be bound by terms in spreadsheet examples from first meeting, including commission structure and 50/50 equity split with termination buyout at two times commission -- AM and PD appealed -- Appeal allowed on other grounds -- There was no error in trial judge's conclusion that AM breached oral agreement -- Trial judge's finding did not turn option to purchase book of business on termination into mandatory obligation on contractors to buy them on termination -- Trial judge found oral agreement was made based on spreadsheet, not on broker's unsigned agreement -- It was implicit in arrangement that whoever sold book of business would not solicit those customers for two years, reflecting two times annual commission price formula.

*Gentech Insurance Ltd.*

*v. Martina*

(2012), 2012 CarswellOnt 11243, 2012 ONCA 605, E. Ducharme J.A., K. Feldman J.A., Robert J. Sharpe J.A. (Ont. C.A.); reversing in part (2011), 3 C.C.L.I. (5th) 111, 2011 ONSC 5904, 2011 CarswellOnt 10610, Stinson J. (Ont. S.C.J.) [Ontario]

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TOR.XIII.3

**Subject Title: Torts**

**Classification Number: XIII.3**

**Invasion of privacy -- Breach of confidence**

Individual's personal integrity and freedom is just as vulnerable to individual or corporate intrusion as it is to state intrusion; protecting privacy is properly province of statutory remedy or tort law.

*Alberta v. A.U.P.E.*

[\(2012\), 2012 CarswellAlta](#)

[896](#), Andrew C.L. Sims Member (Alta. Arb. Bd.) [Alberta]

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TOR.XIV.1.b

**Subject Title: Torts**

**Classification Number: XIV.1.b**

**Malicious prosecution and false imprisonment -- Elements of cause of action -- Malicious prosecution**

Plaintiff was arrested -- Decision was made not to proceed with prosecution and charges were dismissed -- Action involved claim for damages arising out of three arrests -- Plaintiff brought proceedings against police officers and employees for negligence investigation, false arrest and imprisonment, and violation of rights under Canadian Charter of Rights and Freedoms -- Plaintiff claimed against complainants in matters leading to three arrests claiming claimants made false and misleading statements or negligent statements to police -- Plaintiff claimed malicious prosecution, wrongful imprisonment, abuse of legal process, and negligence -- Complainants brought counterclaim claiming damages alleging several incident of damage to their motor vehicles -- Defendant police officer and employer brought motion for non-suit -- Claims were dismissed -- Officer had reasonable and probable cause to arrest plaintiff on occasions -- Action for malicious prosecution was dismissed -- Although defendants desired to prosecute plaintiff there were other material facts provided to prosecutor at time that enabled independent determination to prosecute -- Plaintiff did not establish absence of reasonable and probable cause or malice operating in minds of defendants -- Motion for non-suit as it related to claim for false arrest and imprisonment was refused -- Plaintiff adduced evidence regarding involvement of officer in causing plaintiff's arrest and imprisonment which required defendant to adduce evidence of reasonable and probable grounds for arrest -- Motion with respect to claim for negligent investigation was allowed -- Plaintiff adduced no evidence of standard of care required in circumstances -- Plaintiff adduced no evidence from which reasonable jury could infer liability for negligent investigation -- Motion for non-suit as it related to claim for breach of Charter rights was allowed -- Plaintiff adduced no evidence that officer engaged in required conduct -- Counterclaim was allowed -- Plaintiff was responsible for damage to vehicles -- Plaintiff was ordered to pay complainants \$289.

*Cave v. Bambury*

[\(2012\), 2012 CarswellINS 217, 2012 NSSC 129](#), N.

M. Scaravelli J. (N.S. S.C.) [Nova Scotia]

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TOR.XIV.1.c

**Subject Title: Torts****Classification Number: XIV.1.c****Malicious prosecution and false imprisonment -- Elements of cause of action -- False imprisonment**

Plaintiff was arrested -- Decision was made not to proceed with prosecution and charges were dismissed -- Action involved claim for damages arising out of three arrests -- Plaintiff brought proceedings against police officers and employees for negligence investigation, false arrest and imprisonment, and violation of rights under Canadian Charter of Rights and Freedoms -- Plaintiff claimed against complainants in matters leading to three arrests claiming claimants made false and misleading statements or negligent statements to police -- Plaintiff claimed malicious prosecution, wrongful imprisonment, abuse of legal process, and negligence -- Complainants brought counterclaim claiming damages alleging several incident of damage to their motor vehicles -- Defendant police officer and employer brought motion for non-suit -- Claims were dismissed -- Officer had reasonable and probable cause to arrest plaintiff on occasions -- Action for malicious prosecution was dismissed -- Although defendants desired to prosecute plaintiff there were other material facts provided to prosecutor at time that enabled independent determination to prosecute -- Plaintiff did not establish absence of reasonable and probable cause or malice operating in minds of defendants -- Motion for non-suit as it related to claim for false arrest and imprisonment was refused -- Plaintiff adduced evidence regarding involvement of officer in causing plaintiff's arrest and imprisonment which required defendant to adduce evidence of reasonable and probable grounds for arrest -- Motion with respect to claim for negligent investigation was allowed -- Plaintiff adduced no evidence of standard of care required in circumstances -- Plaintiff adduced no evidence from which reasonable jury could infer liability for negligent investigation -- Motion for non-suit as it related to claim for breach of Charter rights was allowed -- Plaintiff adduced no evidence that officer engaged in required conduct -- Counterclaim was allowed -- Plaintiff was responsible for damage to vehicles -- Plaintiff was ordered to pay complainants \$289.

*Cave v. Bambury*[\(2012\), 2012 CarswellNS 217, 2012 NSSC 129](#), N.

M. Scaravelli J. (N.S. S.C.) [Nova Scotia]

TOR.XIV.2.c.vi

**Subject Title: Torts****Classification Number: XIV.2.c.vi****Malicious prosecution and false imprisonment -- Establishing elements -- Want of reasonable and probable cause -- Miscellaneous**

Plaintiff, black African-Canadian man, was arrested following report of domestic violence against his European-Caucasian wife S -- All charges against plaintiff were subsequently withdrawn -- Plaintiff brought action for damages against police officers and Police Services Board claiming, inter alia, that he was victim of malicious prosecution based on lack of reasonable and probable grounds and improper motivation in laying criminal charges -- Action dismissed -- Malicious prosecution requires evidence of wilful and intentional effort on part of defendant to abuse or distort its proper role within criminal justice system -- Arresting officer must subjectively have reasonable and probable grounds on which to base arrest, and those grounds must be objectively justifiable -- There is no requirement that arrest not be made until police investigation is completed -- As result of information received from S, defendant officer M believed there were reasonable and probable grounds to charge plaintiff with uttering death threats and assault -- There was nothing improper

or unfair in police not asking plaintiff for his version of events at time of his arrest or at police station -- Absent clear and informed waiver or exhaustion of efforts to contact counsel, it would have been highly improper for police to ask plaintiff for his version of events.

*Kellman v. Iverson* (2012), 2012 CarswellOnt 7016, 2012 ONSC 3244, B.P. O'Marra J. (Ont. S.C.J.); additional reasons at (2012), 2012 CarswellOnt 11074, 2012 ONSC 4528, B.P. O'Marra J. (Ont. S.C.J.) [Ontario]

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TOR.XIV.4.b.i

**Subject Title: Torts**

**Classification Number: XIV.4.b.i**

**Malicious prosecution and false imprisonment -- Liability of parties -- Participant in arrest -- Police officers**

Plaintiff was arrested -- Decision was made not to proceed with prosecution and charges were dismissed -- Action involved claim for damages arising out of three arrests -- Plaintiff brought proceedings against police officers and employees for negligence investigation, false arrest and imprisonment, and violation of rights under Canadian Charter of Rights and Freedoms -- Plaintiff claimed against complainants in matters leading to three arrests claiming claimants made false and misleading statements or negligent statements to police -- Plaintiff claimed malicious prosecution, wrongful imprisonment, abuse of legal process, and negligence -- Complainants brought counterclaim claiming damages alleging several incident of damage to their motor vehicles -- Defendant police officer and employer brought motion for non-suit -- Claims were dismissed -- Officer had reasonable and probable cause to arrest plaintiff on occasions -- Action for malicious prosecution was dismissed -- Although defendants desired to prosecute plaintiff there were other material facts provided to prosecutor at time that enabled independent determination to prosecute -- Plaintiff did not establish absence of reasonable and probable cause or malice operating in minds of defendants -- Motion for non-suit as it related to claim for false arrest and imprisonment was refused -- Plaintiff adduced evidence regarding involvement of officer in causing plaintiff's arrest and imprisonment which required defendant to adduce evidence of reasonable and probable grounds for arrest -- Motion with respect to claim for negligent investigation was allowed -- Plaintiff adduced no evidence of standard of care required in circumstances -- Plaintiff adduced no evidence from which reasonable jury could infer liability for negligent investigation -- Motion for non-suit as it related to claim for breach of Charter rights was allowed -- Plaintiff adduced no evidence that officer engaged in required conduct -- Counterclaim was allowed -- Plaintiff was responsible for damage to vehicles -- Plaintiff was ordered to pay complainants \$289.

*Cave v. Bambury* (2012), 2012 CarswellINS 217, 2012 NSSC 129, N. M. Scaravelli J. (N.S. S.C.) [Nova Scotia]

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TOR.XVI.2.a

**Subject Title: Torts**

**Classification Number: XVI.2.a**



## **Negligence -- Duty and standard of care -- Duty of care**

This was to determine liability -- Defendant was plaintiff's mother -- Plaintiff was at defendant's house -- Defendant was going to airport to pick up son -- Defendant appeared anxious to plaintiff -- Plaintiff noticed that defendant's vehicle had not moved so she went outside to ask mother if she wanted her to call airport -- Plaintiff was not wearing shoes and she was walking very carefully -- Plaintiff stumbled from walkway to driveway but regained balance -- Defendant backed down driveway and struck plaintiff -- Plaintiff suffered serious injury to back -- Judgment for plaintiff -- Defendant acknowledged that she owed plaintiff duty of care -- As defendant backed down driveway she encountered no visibility problems -- Plaintiff could have been seen by defendant through mirrors or by turning head to rear and looking out rear window -- Defendant was not expecting plaintiff to stumble from walkway to driveway or to leave front door to speak with her -- Parties did not communicate with each other -- However, defendant had obligation through entire process of backing down long driveway to be aware of what was behind her -- It was inferred that plaintiff was visible before she stumbled and after she stumbled onto driveway -- Defendant commenced reversing vehicle down driveway but took no steps to determine whether she could do so in safety -- Had defendant taken precautions she would have seen plaintiff who -- Defendant breached duty of care to plaintiff and was negligent -- Plaintiff's stumble was not material and did not cause accident -- Defendant was 100 percent liable for accident.

*Carson v. Henyecz*

[\(2012\), 2012 BCSC 314, 2012](#)

[CarswellBC 685](#), H.C. Hyslop J. (B.C. S.C.) [British Columbia]

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TOR.XVI.2.a

**Subject Title: Torts**

**Classification Number: XVI.2.a**

## **Negligence -- Duty and standard of care -- Duty of care**

Defendants G.S. and J.S. applied to have plaintiff's claim dismissed -- Plaintiff was employed by company from 2005 to 2009 as chief information officer -- Plaintiff alleged she was sexually assaulted and sexually harassed by defendant J.A.M., president and CEO of company -- Plaintiff alleged that defendant J.M., J.A.M.'s wife, was accomplice in planning and execution of alleged sexual assault -- Plaintiff alleged that defendant T.B. was accomplice in alleged harassment -- G.S. and J.S. were directors of company -- Plaintiff alleged that G.S. and J.S. were negligent in failing to intervene and they allowed alleged harassment and assault to occur -- Plaintiff alleged that G.S. and J.S. were vicariously liable for damages caused by sexual harassment and assault -- J.S. and G.S. claimed that they were never involved in day-to-day operations of company and had no knowledge of sexual assault or harassment until years after they allegedly occurred -- Application granted -- Based on evidence, there should not be finding of negligence against G.S. and J.S. such that they should be liable for plaintiffs alleged damages -- It could not be concluded that they had actual knowledge or were wilfully blind to alleged acts or atmosphere at company that would encourage alleged harassment -- There was nothing to raise suspicions of J.S. and G.S. such that they would have been obligated to investigate plaintiff's allegations -- Duty of care was owed by J.S. and G.S. in relation to foreseeable risk of harm -- However, risk was not foreseeable -- Given roles of J.S. and G.S. in company, there was nothing that would lead them, as reasonable people, to have foreseen what was alleged by plaintiff might occur -- Company's operations were reasonable and liability could not be based solely on unpredictability that produced what was alleged by plaintiff.

*J. (I.) v. M. (J.A.)*

[\(2012\), 2012](#)

[CarswellBC 1033, 2012 BCSC 519](#), Grant Burnyeat J. (B.C. S.C. [In Chambers]) [British Columbia]

TOR.XVI.2.k

**Subject Title: Torts**

**Classification Number: XVI.2.k**

**Negligence -- Duty and standard of care -- Miscellaneous**

This was to determine liability for motor vehicle accident -- Plaintiff was travelling west in centre lane and then changed to curb lane to prepare for right turn -- Plaintiff saw two vehicles in rear-view mirror coming up behind her and she thought they were speeding -- Plaintiff claimed that in flash, defendant's vehicle hit her vehicle -- Plaintiff did not remember much about the accident -- Defendant claimed that plaintiff changed lanes in front of him and he had no time to apply brakes before rear-ending her -- Defendant was given ticket for excessive speeding -- Plaintiff claimed she suffered from chronic pain disorder -- Judgment for plaintiff -- Defendant's version of events leading to collision was highly unlikely and was rejected -- Defendant was speeding and when he came upon plaintiff's vehicle, which was properly situated in right hand lane, he applied brakes but was unable to stop before he collided with her -- Defendant breached duty of care and failed to exercise standard of care expected of reasonable person in circumstances -- Defendant was wholly liable for accident -- Plaintiff was not contributorily negligent.

*Mohan v. Khan*

[\(2012\)](#), [2012 CarswellBC 803](#), [2012 BCSC 436](#), Bowden J.

(B.C. S.C.) [British Columbia]

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TOR.XVI.2.k

**Subject Title: Torts**

**Classification Number: XVI.2.k**

**Negligence -- Duty and standard of care -- Miscellaneous**

This was to determine liability after plaintiff sustained injuries when she fell while onboard transit bus -- Bus stopped suddenly and plaintiff was propelled forward to floor at front of bus from standing position by rear door -- Defendant P.B. was bus driver and he vigorously and abruptly applied brakes to avoid collision with two vehicles that had stopped ahead of him -- Plaintiff was standing because she intended to get off at next bus stop -- Plaintiff had pain in lower back, neck, heels and right wrist -- Primary injuries were to lower back and wrist -- Plaintiff's job was physically demanding -- She took some time off work to recover from injuries but she continued to work full-time -- Judgment for plaintiff -- P.B. owed duty of care to plaintiff -- P. B. was either travelling too quickly, was not maintaining diligent look out or he failed to maintain safe distance from vehicle in front of him -- P.B.'s sudden and vigorous application of brakes, in context of circumstances of case, established prima facie case of negligence against P.B. -- Defendants did not establish that P.B. conducted himself in reasonable and careful manner that was consistent with high duty of care imposed on those engaged in public transit -- P.B. breached standard of care of reasonably prudent bus driver -- P.B. was negligent and negligence caused plaintiff's injuries -- Plaintiff was not contributorily negligent, as she acted reasonably in circumstances -- Defendants were wholly liable for plaintiff's damages.

*Prempeh v. Boisvert*

[\(2012\)](#), [2012 BCSC 304](#),

[2012 CarswellBC 468](#), Dardi J. (B.C. S.C.) [British Columbia]

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TOR.XVI.5.d.ii.B

**Subject Title: Torts**

**Classification Number: XVI.5.d.ii.B**

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

This was to determine liability for motor vehicle/pedestrian accident -- Plaintiff worked at ticket booth at ferry terminal -- Plaintiff alleged that there was dispute between defendant and plaintiff over size of defendant's vehicle -- Defendant booked reservation on ferry but plaintiff informed her that vehicle exceeded 20 feet in length -- Plaintiff claimed that defendant became irate and yelled at her -- Plaintiff claimed she heard defendant talking to another worker and threatened to have plaintiff fired -- Plaintiff left ticket booth and was struck by defendant's mirror -- Defendant claimed that plaintiff was very rude to her -- Defendant claimed plaintiff did not tell her which lane to park in so she asked another worker -- She did not see plaintiff standing there as she accelerated truck -- Judgment for plaintiff -- There were credibility issues with both parties -- Plaintiff had made inconsistent statements with no explanation -- There was significant risk that parts of plaintiff's evidence was not reliable -- There were also weaknesses with defendant's evidence that diminished her credibility -- Based on evidence, plaintiff did not make eye contact with defendant before she drove forward -- Defendant did not see plaintiff before mirror hit her -- Plaintiff did not have sufficient time to move out of way and defendant did not see her until it was too late to avoid collision -- Defendant driver of vehicle owed legal duty to take reasonable care not to injure pedestrian such as plaintiff -- Defendant ought to have seen plaintiff and should not have driven forward until she got out of way -- Defendant failed to see plaintiff because she was not maintaining proper lookout -- Defendant's act of driving forward in circumstances was negligent in that it fell below standard of reasonable driver -- Plaintiff failed to take reasonable care for own safety when she left ticket booth and took position close to defendant's truck -- Plaintiff should not have put herself in position she was in and was negligent -- Plaintiff's negligence was contributing cause of accident -- As there was no basis for attributing greater share of fault to one party, liability was apportioned equally between parties.

*Leigh v. Mead*

[\(2012\)](#), [2012 CarswellBC 1004](#), [2012 BCSC 513](#), D.A.

Halfyard J. (B.C. S.C.) [British Columbia]

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TOR.XVI.5.i.vi.A

**Subject Title: Torts**

**Classification Number: XVI.5.i.vi.A**

**Negligence -- Contributory negligence -- Ultimate negligence -- Application to particular situations -- Automobile accidents**

This was to determine liability for motor vehicle accident -- Accident occurred when plaintiff was proceeding through intersection and was struck on side by defendant G.D.'s left turning vehicle -- Plaintiff

claimed he suffered injuries to neck and back and that he suffered ongoing pain and limitations as result of injuries -- Judgment for plaintiff -- Accident was caused by G.D.'s negligence in turning left when it was unsafe to do so -- G.D. failed to establish that plaintiff was contributorily negligent.

*Tait v. Dumansky*

[\(2012\), 2012 BCSC 332, 2012 CarswellBC](#)

[516](#), Gerow J. (B.C. S.C.) [British Columbia]

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TOR.XVI.7.b

**Subject Title: Torts**

**Classification Number: XVI.7.b**

**Negligence -- Vicarious liability -- Miscellaneous**

Defendants G.S. and J.S. applied to have plaintiff's claim dismissed -- Plaintiff was employed by company from 2005 to 2009 as chief information officer -- Plaintiff alleged she was sexually assaulted and sexually harassed by defendant J.A.M., president and CEO of company -- Plaintiff alleged that defendant J.M., J.A.M.'s wife, was accomplice in planning and execution of alleged sexual assault -- Plaintiff alleged that defendant T.B. was accomplice in alleged harassment -- G.S. and J.S. were directors of company -- Plaintiff alleged that G.S. and J.S. were negligent in failing to intervene and they allowed alleged harassment and assault to occur -- Plaintiff alleged that G.S. and J.S. were vicariously liable for damages caused by sexual harassment and assault -- J.S. and G.S. claimed that they were never involved in day-to-day operations of company and had no knowledge of sexual assault or harassment until years after they allegedly occurred -- Application granted -- G.S. and J.S. were not vicariously liable for alleged acts of J.A.M. and T.B. as employees -- Acts of J.A.M. and T.B. were not authorized by G.S. or J.S. or company -- Any vicarious liability was not materially related to risk introduced or enhanced by G.S. or J.S. -- It was not appropriate to impose status of involuntary insurers on G.S. and J.S.

*J. (I.) v. M. (J.A.)*

[\(2012\), 2012](#)

[CarswellBC 1033, 2012 BCSC 519](#), Grant Burnyeat J. (B.C. S.C. [In Chambers]) [British Columbia]

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TOR.XVI.8.c.v

**Subject Title: Torts**

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

**Negligence -- Occupiers' liability -- Particular situations -- Stores**

Motion by defendant for summary judgment for order dismissing plaintiff's action for damages for negligence or breach of defendant's obligations under Occupiers' Liability Act (Ont.) -- In 2008, plaintiff, had ice cream container fall on her when she attempted to remove two ice cream containers stacked one on top of other from top shelf of freezer at defendant's grocery store -- Motion granted -- Action was dismissed -- There were no genuine issues requiring trial -- Stacking of ice cream products on shelf in manner presented was in accordance with industry standards and was entirely reasonable -- Plaintiff's own actions caused ice cream container to fall on her -- Plaintiff failed to establish that store must have warning signs scattered throughout store to denote potential of danger to customers if one decided to secure item from

shelf above one's height -- Redesign of freezers and shelving units to match stature of class of customers and having attendants standing by for moment when they may be of assistance to customer was neither practical nor reasonable.

*Miltenberg v. Metro Inc.*

[\(2012\), \[2012\]](#)

[O.J. No. 662, 2012 CarswellOnt 1588, 2012 ONSC 1063](#), A.J. Goodman J. (Ont. S.C.J.) [Ontario]

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TOR.XVI.8.c.vii

**Subject Title: Torts**

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

**Negligence -- Occupiers' liability -- Particular situations -- Landlord and tenant**

Ruptured pipe -- Heat -- Action by landlord for damages caused by pipe bursting in apartment plaintiff rented to defendant -- Flooding damaged defendant's unit and other parts of complex -- Plaintiff argued defendant was negligent and breached lease agreement in turning thermostat off, which led to pipe freezing and bursting -- Defendant denied turning thermostat off -- Lease agreement stated tenants would be responsible for costs of repairing broken pipes and damage caused -- Each winter, property management distributed notices telling tenants not to turn thermostat below 18 degrees Celsius or to open doors and windows when it was below freezing out -- Defendant was often absent from his apartment because he worked in Northern Alberta -- Defendant was away at time of incident -- Property manager's son discovered wet carpet in hallway outside defendant's unit and defendant's unit was filled with steam -- Hot water was running from ruptured radiator pipe below closed window in bedroom -- Manager and her son testified thermostat was set in off position -- Plaintiff sought \$49,849 for repair costs and loss of rental income -- Defendant was adamant he did not turn off thermostat -- Defendant insisted he would not want to come home to cold unit and did not pay for heat so had no reason to turn thermostat off -- Defendant pointed out that property manager checked in on his fish for him while he was away -- Action dismissed -- Lease agreement did not include covenant to insure, so defendant was not immune from subrogation rights advanced by plaintiff's insurer -- There was no direct evidence defendant turned thermostat off -- While property manager was credible overall, there was inconsistency in her and her son's versions of events surrounding discovery of thermostat, they were under considerable stress and left door open, so someone else could have turned it off -- Defendant was very credible and his evidence was consistent and adamant -- Plain reading of lease held tenants liable if damage was caused by open window or thermostat off, not for all instances of frozen pipes -- There was no evidence defendant left window or door open or set thermostat below 18 degrees Celsius -- It was clear ruptured pipe caused damage, but not clear what caused rupture.

*1051385 Alberta Ltd.*

*v. Meunier*

[\(2012\), 2012 CarswellAlta 451, 2012 ABOB 162](#), Don J. Manderscheid

J. (Alta. Q.B.) [Alberta]

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TOR.XVI.14.b.i.A

**Subject Title: Torts**

**Classification Number: XVI.14.b.i.A**

## **Negligence -- Practice and procedure -- Pleadings -- Amendment -- Adding or striking out claim**

Application by defendant CMHC to strike out claim as disclosing no cause of action -- Infant plaintiff brought action for damages for personal injuries sustained in fall from staircase at defendant M.B.'s home -- Staircase leading to exterior deck constructed by M.B. without handrail or guard, allegedly contrary to building code, with forgivable loan provided by defendant CMHC under Canadian Home Renovation Plan -- Plan provided for two inspections of renovations by CMHC, first to ensure specifications adequate and quote reasonable and second to ensure work completed satisfactorily -- Parties agreed plan required construction to meet "residential standards" -- CMHC brought within application on basis it owed no common law or statutory duty of care to plaintiff -- Application dismissed -- Power to strike out pleadings exercised with great care, only to eliminate claims with no prospect of success -- Court had to assume facts pleaded true unless manifestly incapable of proof -- Plaintiff here pleaded CMHC's funding and inspection of staircase created duty of care to later users -- While CMHC asserted inspections conducted only for purpose of ensuring construction met criteria for funding, argument rested on proof of facts only capable of being established by evidence -- On facts pleaded, plaintiff had reasonable prospect of establishing CMHC owed duty of care founded on proximity and negligent inspection.

*Benoit (Litigation*

*Guardian of) v. Banfield*

[\(2012\),](#)

[2012 BCSC 265](#), [2012 CarswellBC 532](#), C.A. Wedge J. (B.C. S.C.) [British Columbia]

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TOR.XVI.14.f.ii.B.1

**Subject Title: Torts**

**Classification Number: XVI.14.f.ii.B.1**

## **Negligence -- Practice and procedure -- Trials -- Nonsuit or dismissal of action -- Sufficiency of evidence to go to jury -- Weight of evidence required**

Plaintiff was arrested -- Decision was made not to proceed with prosecution and charges were dismissed -- Action involved claim for damages arising out of three arrests -- Plaintiff brought proceedings against police officers and employees for negligence investigation, false arrest and imprisonment, and violation of rights under Canadian Charter of Rights and Freedoms -- Plaintiff claimed against complainants in matters leading to three arrests claiming claimants made false and misleading statements or negligent statements to police -- Plaintiff claimed malicious prosecution, wrongful imprisonment, abuse of legal process, and negligence -- Complainants brought counterclaim claiming damages alleging several incident of damage to their motor vehicles -- Defendant police officer and employer brought motion for non-suit -- Claims were dismissed -- Officer had reasonable and probable cause to arrest plaintiff on occasions -- Action for malicious prosecution was dismissed -- Although defendants desired to prosecute plaintiff there were other material facts provided to prosecutor at time that enabled independent determination to prosecute -- Plaintiff did not establish absence of reasonable and probable cause or malice operating in minds of defendants -- Motion for non-suit as it related to claim for false arrest and imprisonment was refused -- Plaintiff adduced evidence regarding involvement of officer in causing plaintiff's arrest and imprisonment which required defendant to adduce evidence of reasonable and probable grounds for arrest -- Motion with respect to claim for negligent investigation was allowed -- Plaintiff adduced no evidence of standard of care required in circumstances -- Plaintiff adduced no evidence from which reasonable jury could infer liability for negligent investigation -- Motion for non-suit as it related to claim for breach of Charter rights was allowed -- Plaintiff adduced no evidence that officer engaged in required conduct -- Counterclaim was allowed -- Plaintiff was responsible for damage to vehicles -- Plaintiff was ordered to pay complainants \$289.

*Cave v. Bambury*

[\(2012\)](#), [2012 CarswellNS 217](#), [2012 NSSC 129](#), N.

M. Scaravelli J. (N.S. S.C.) [Nova Scotia]

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TOR.XVI.14.g.ii.C

**Subject Title: Torts**

**Classification Number: XVI.14.g.ii.C**

**Negligence -- Practice and procedure -- Costs -- Contributory negligence -- Miscellaneous**

In June 2007, plaintiff wife was walking to work when she tripped and fell, landing face down on roadway adjacent to sidewalk -- Plaintiff husband drove wife to medical centre, where she was diagnosed with undisplaced fracture of medial tibial plateau -- By June 2008, sidewalk in question was replaced by city -- Plaintiffs commenced successful action for damages -- Wife's conduct amounted to contributory negligence assessed at 25 per cent -- Hearing on costs was held -- Plaintiffs were awarded costs of \$75,000 -- Plaintiffs were entitled to partial indemnity costs to date their offer to settle was served and substantial indemnity costs from that date -- Award at trial exceeded amount in offer to settle -- Time spent in this case was not manifestly unreasonable.

*Riehl v. Hamilton (City)*

[\(2012\)](#),

[2012 CarswellOnt 9160](#), [2012 ONSC 4300](#), Cavarzan J. (Ont. S.C.J.); additional reasons to [\(2012\)](#), [2012 ONSC 3333](#), [2012 CarswellOnt 6964](#), [98 M.P.L.R. \(4th\) 328](#), Cavarzan J. (Ont. S.C.J.) [Ontario]

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TOR.XX.4.a.ii

**Subject Title: Torts**

**Classification Number: XX.4.a.ii**

**Trespass -- Trespass to person -- Assault and battery -- Miscellaneous**

Defendants were noted in default -- Plaintiff's claim that defendant wife drugged plaintiff without plaintiff's knowledge or consent causing plaintiff to fall asleep constituted tort of battery -- Plaintiff's claims that defendants engaged in sexual activity while plaintiff was sleeping did not constitute valid cause of action for which plaintiff could recover damages from defendants -- One defendant taunting plaintiff regarding sexual relations with plaintiff's wife did not constitute valid cause of action -- Defendant contracting venereal infection on two occasions from wife who knew or ought to have known wife placed plaintiff at risk constituted tort of battery -- Claim that plaintiff advanced fund to wife for care of child but wife used funds for other purposes lacked sufficient particulars and any proof of loss and did not constitute valid cause of action -- Plaintiff's claim defendants used plaintiff's identity to facilitate fraudulent immigration spousal sponsorship of third party lack sufficient particulars and did not constitute valid cause of action -- Plaintiff did not establish valid cause of action of infliction of mental suffering -- Plaintiff did not prove plaintiff suffered sufficient pain and suffering as result of being drugged to justify award for non-pecuniary general damages in range of \$25,000 to \$50,000 as plaintiff submitted -- Plaintiff did not provide medical evidence in support of claim for damages -- Plaintiff was awarded damages of \$5,000.

*Misir v. Baichulall*

[2012 ONSC 893](#), Hainey J. (Ont. S.C.J.) [Ontario]

[\(2012\), 2012 CarswellOnt 1449,](#)

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