

## The Canadian Abridgment eDigests -- Torts

2012-6  
February 06, 2012

TOR.V.9.b.iii.B

**Subject Title: Torts**

**Classification Number: V.9.b.iii.B**

**Defamation -- Practice and procedure -- Pleadings -- Pleading defamatory words -- Particulars**

Defendant DT, who was employed by defendant M Ltd., was financial officer responsible for overseeing mortgage sale of plaintiff's residence -- Plaintiff, who was high school teacher, asked two students to confirm that they were children of DT -- DT spoke to principal and advised that his daughters wished to switch out of plaintiff's class; this request was not granted -- Plaintiff was later informed that his contract would not be renewed, due to his unsatisfactory instructional and professional practice as related by parents and students -- Plaintiff brought defamation action against DT and other defendants -- DT and M Ltd. brought motion to strike out statement of claim -- Motion granted -- Statement of claim lacked sufficient material facts or particulars upon which successful claim could be based, and failed to disclose reasonable cause of action -- Defendant was entitled to know precise words which formed basis of allegation -- There was, essentially, no citation of words allegedly uttered which could be assessed for their defamatory character -- No proper response was forthcoming from defendants' attempt to acquire further information by serving demand for particulars -- Onus was not on defendants to persistently pursue plaintiff for further particulars -- Stating that one has "poor past professional relationship" with someone else was not, without more, defamatory -- Notation that "some very unpleasant things were said two years ago" was completely ambiguous as to whether any alleged unpleasant comments came from plaintiff or DT -- There were no particulars upon which to concluded that there was any libel, slander, defamation, breach of trust or other actionable conduct resulting from comments in question.

*Ayangma v. Metro Credit  
Union Ltd.*

[\(2011\), 2011 PESC 18, 2011 CarswellPEI 38](#), Gordon L. Campbell J. (P.

E.I. S.C.) [P.E.I.]

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TOR.V.9.b.vi

**Subject Title: Torts**

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

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

Defendant DT, who was employed by defendant M Ltd., was financial officer responsible for overseeing mortgage sale of plaintiff's residence -- Plaintiff, who was high school teacher, asked two students to confirm that they were children of DT -- DT spoke to principal and advised that his daughters wished to switch out of plaintiff's class; this request was not granted -- Plaintiff was later informed that his contract would not be renewed, due to his unsatisfactory instructional and professional practice as related by parents and students -- Plaintiff brought defamation action against DT and other defendants, arising from alleged reference made

to principal as to poor past professional relationship with plaintiff -- DT and M Ltd. brought motion to strike out statement of claim -- Motion granted -- On facts pleaded, there was nothing in alleged communications referred to in statement of claim which was out of context or irrelevant to nature of request or report being made by DT to principal -- Communications that occurred, to extent they could be ascertained from statement of claim, were protected by qualified privilege of parent expressing concerns to school official -- There were no facts set in statement of claim upon which it could be concluded that defendants breached any trust or violated plaintiff's privacy -- No particulars upon which action could be based were provided.

*Ayangma v. Metro Credit Union Ltd.*

[\(2011\), 2011 PESC 18, 2011 CarswellPEI 38](#), Gordon L. Campbell J. (P.

E.I. S.C.) [P.E.I.]

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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**

Plaintiff renter entered into contract with defendant storage company (storer) for unit to store her goods -- Units were new, not climate controlled and had no water pipes -- Storer represented that there were no moisture problems -- Contract provided that renter assumed all risk and was responsible for placing insurance on goods -- Several months later, water damaged goods in renter's units -- No one knew where water came from -- Insurer rejected renter's claim -- Renter brought action for damages in negligence and contract -- Action dismissed -- Storer was not liable for negligent misrepresentation -- There was no discussion between renter and storer about moisture -- Renter assumed that units would be dry because facility was new -- Even if there had been commitment that premises were dry, it would not have amounted to negligent misrepresentation -- There was no evidence of moisture difficulties known to storer before speaking to renter -- Source of water damage was mystery -- Comments about premises being dry would have been considered accurate at time they were made.

*Raabe v. 4042492*

*Manitoba Ltd.*

[\(2011\), 2011 MBQB 234, 2011 CarswellMan 496](#), Dewar

J. (Man. Q.B.) [Manitoba]

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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**

Plaintiff renter entered into contract with defendant storage company (storer) for unit to store her goods -- Units were new, not climate controlled and had no water pipes -- Storer represented that there were no

moisture problems -- Contract provided that renter assumed all risk and was responsible for placing insurance on goods -- Several months later, water damaged goods in renter's units -- No one knew where water came from -- Insurer rejected renter's claim -- Renter brought action for damages in negligence and contract -- Action dismissed -- Storer was not liable in negligence -- Source of water damage was mystery -- There was insufficient evidence to find that there had been any fault on part of storer -- There was gap under sidewall of unit -- Existence of gap was minor deficiency -- Storer did not breach any duty to keep its premises free of water by virtue of failing to discover and fix gap -- Even if source of water was pressure washer used in adjacent unit, storer was not negligent -- There was no evidence that storer had knowledge of activity and did not ensure that it was carried on in safe and careful manner.

*Raabe v. 4042492*

*Manitoba Ltd.*

[\(2011\), 2011 MBQB 234, 2011 CarswellMan 496](#), Dewar

J. (Man. Q.B.) [Manitoba]

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TOR.XVI.3.b

**Subject Title: Torts**

**Classification Number: XVI.3.b**

**Negligence -- Causation -- Foreseeability and remoteness**

Plaintiff driver was seriously injured in motor vehicle accident on regional road within town boundaries at 7:00 a.m. on April 1, 2003 -- Road was snow covered and icy at time of accident -- Environment Canada forecasted measurable amount of snow in early hours of April 1, 2003 -- Snow began to fall in area of accident at 4:00 a.m. on April 1, 2003 -- No ice pellets fell during night -- Town did not schedule crew to monitor road conditions overnight -- Town did not begin salting road until 7:15 a.m. -- Driver successfully brought action against municipality -- Municipality appealed -- Appeal dismissed -- In present case, allegations of fault directed at appellants did not include failure to treat icy roadway within four hours of becoming aware of icy conditions, as required by s. 5 of Minimum Maintenance Standards for Municipal Highways ("Regulation") -- Trial judge's findings of default on part of municipality were directed at failures to take reasonable steps to avoid ice forming on road -- These included failures to monitor weather and to have deployed resources much earlier than was done so as to avoid formation of ice -- Trial judge was correct in finding that s. 5 of Regulation did apply to failures or defaults that underlay his finding of liability -- Section 5 did not provide defence to appellants -- Conclusion was supported by language of section and by common sense.

*Giuliani v. Halton*

*(Regional Municipality)*

[\(2011\),](#)

[2011 CarswellOnt 14436, 2011 ONCA 812](#), D. O'Connor A.C.J.O., H.S. LaForme J.A., J.D. Cunningham A.C.J. S. C.J. (ad hoc) (Ont. C.A.); affirming [\(2010\), 75 M.P.L.R. \(4th\) 239, \[2010\] O.J. No. 3674, 1 M.V.R. \(6th\) 19, 2010 ONSC 4630, 2010 CarswellOnt 6399](#), Murray J. (Ont. S.C.J.) [Ontario]

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TOR.XVI.8.b.ii

**Subject Title: Torts**

**Classification Number: XVI.8.b.ii**

**Negligence -- Occupiers' liability -- Duties and obligations -- Contractual**

O was limited partnership; some of its affiliates included A Inc. and Subco -- O entered into agreement with B Inc., pursuant to which parties agreed that A Inc., through its wholly owned subsidiary Subco, would acquire B Inc. pursuant to plan of arrangement under s. 192 of Canada Business Corporations Act -- Under arrangement, A, through Subco, was to acquire all issued and outstanding common shares of B Inc. -- By terms of arrangement, if shareholders of B Inc. had not deposited their shares by time of closing, they had six years to deposit their certificates and obtain payment -- At end of six years, cash not paid out to any former shareholder who had not deposited his or her certificate was deemed to have been surrendered to Subco -- C was depository for arrangement under terms of depository agreement -- At end of six-year period, C held \$12 million that had not been paid to former shareholders of B Inc. -- One month before end of six-year period, O sold B Inc. to E Inc., which included Subco that was entitled to \$12 million -- One year later E Inc. requested C to remit money to it, which it did -- O claimed that it did not know there was substantial amount owing to former shareholders of B Inc. -- O brought action against C claiming damages of \$12 million for breach of contract and negligence -- Action dismissed -- Section 13.1 of depository agreement provided that C shall have no duties or obligations other than those set forth in agreement or subsequently agreed upon -- There was no obligation set forth requiring C to notify O of amount of money held by C for shareholders or, after closing of arrangement, held for former shareholders who had not tendered their certificates -- Any claim for negligence against C for its failure to notify O of number of certificates deposited was also precluded by s. 13.1 of depository agreement -- C did not represent by its silence that there was no remaining unclaimed money; silence can amount to misrepresentation if something true has been said but information not said makes thing said untrue.

*Oncap L.P. v.*

*Computershare Trust Co.  
of Canada*

[\(2011\), 2011 CarswellOnt 13917, 2011 ONSC 7129](#), Newbould J. (Ont. S.C.

J. [Commercial List]) [Ontario]

TOR.XVI.8.c.xv

**Subject Title: Torts**

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

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

Self storage facility -- Plaintiff renter entered into contract with defendant storage company (storer) for unit to store her goods -- Units were new, not climate controlled and had no water pipes -- Storer represented that there were no moisture problems -- Contract provided that renter assumed all risk and was responsible for placing insurance on goods -- Several months later, water damaged goods in renter's units -- No one knew where water came from -- Insurer rejected renter's claim -- Renter brought action for damages in negligence and contract -- Action dismissed -- Storer was not liable for breach of duty under Occupiers' Liability Act -- Act applied to this situation -- Storer was occupier -- Arrangement was not one of bailment -- Act did not make occupier guarantor or insurer -- Storer did not breach duty in s. 3 of Act to take such care as was reasonable to see that property was reasonably safe while on premises -- Source of water damage was mystery -- Storer did not breach any duty to keep its premises free of water by virtue of failing to discover and fix gap -- There was no evidence that storer had knowledge of pressure washer being used and did not ensure that it was carried on in safe and careful manner.

*Raabe v. 4042492*

*Manitoba Ltd.*

[\(2011\), 2011 MBQB 234, 2011 CarswellMan 496](#), Dewar

J. (Man. Q.B.) [Manitoba]

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TOR.XVI.8.d

**Subject Title: Torts**

**Classification Number: XVI.8.d**

**Negligence -- Occupiers' liability -- Miscellaneous**

Exclusionary clause -- Plaintiff renter entered into contract with defendant storage company (storer) for unit to store her goods -- Units were new, not climate controlled and had no water pipes -- Storer represented that there were no moisture problems -- Contract provided that renter assumed all risk and was responsible for placing insurance on goods -- Several months later, water damaged goods in renter's units -- No one knew where water came from -- Insurer rejected renter's claim -- Renter brought action for damages in negligence and contract -- Action dismissed -- Storer was not liable to renter for water damage sustained to her goods -- Exclusionary clause was upheld -- Clause in agreement that excluded cause of action under Occupiers' Liability Act was reasonable -- There was nothing inherently unreasonable about self storage owner exempting itself from liability for unforeseen damage to goods stored on premises, provided customer was made aware of that intention -- Damage in this case was not intentional -- Renter could have protected herself by obtaining all perils insurance -- Exclusionary clause only excluded causes of action relating to property stored on premises -- Exclusions were not contained in fine print, but were written in bold and had renter's initials beside important clauses -- Wording in agreement, namely, "whatever the cause of such loss", was more understandable to average person than reference to Act.

*Raabe v. 4042492  
Manitoba Ltd.*

[\(2011\), 2011 MBQB 234, 2011 CarswellMan 496](#), Dewar

J. (Man. Q.B.) [Manitoba]

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TOR.XVI.13.h

**Subject Title: Torts**

**Classification Number: XVI.13.h**

**Negligence -- Defences -- Miscellaneous**

Plaintiff driver was seriously injured in motor vehicle accident on regional road within town boundaries at 7:00 a. m. on April 1, 2003 -- Road was snow covered and icy at time of accident -- By 3:30 p.m. on March 31, 2003, Environment Canada forecasted measurable amount of snow in early hours of April 1, 2003 -- Snow began to fall in area of accident at 4:00 a.m. on April 1, 2003 -- At time of accident, there was two cm of snow on road -- No ice pellets fell during night -- Town did not schedule crew to monitor road conditions overnight -- Town did not begin salting road until 7:15 a.m. -- Driver successfully brought action against municipality -- Municipality appealed -- Appeal dismissed -- In present case, allegations of fault directed at appellants did not include failure to treat icy roadway within four hours of becoming aware of icy conditions, as required by s. 5 of Minimum Maintenance Standards for Municipal Highways ("Regulation") -- Trial judge's findings of default on part of municipality were directed at failures to take reasonable steps to avoid ice forming on road --

These included failures to monitor weather and to have deployed resources much earlier than was done so as to avoid formation of ice -- Trial judge was correct in finding that s. 5 of Regulation did apply to failures or defaults that underlay his finding of liability -- Section 5 did not provide defence to appellants -- Conclusion was supported by language of section and by common sense.

*Giuliani v. Halton*

(Regional Municipality)

(2011),

[2011 CarswellOnt 14436](#), [2011 ONCA 812](#), D. O'Connor A.C.J.O., H.S. LaForme J.A., J.D. Cunningham A.C.J. S. C.J. (ad hoc) (Ont. C.A.); affirming [\(2010\)](#), [75 M.P.L.R. \(4th\) 239](#), [\[2010\] O.J. No. 3674](#), [1 M.V.R. \(6th\) 19](#), [2010 ONSC 4630](#), [2010 CarswellOnt 6399](#), Murray J. (Ont. S.C.J.) [Ontario]

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