



Ontario Trial Lawyers Update

Serving OTLA members and advocating for access to justice for all Ontarians.



CASE SUMMARIES

July 7, 2014

***Patterson v. Ontario (Transportation)*, 2014 ONCA 487 (CanLII)**

These appeals arise out of four actions brought in relation to a multi-car accident that resulted in serious personal injury and a fatality. The police accident report showed the defendant, Daniel Louis Gagnon, as the driver and owner of the vehicle that allegedly crossed into the opposite lane and caused the accident. Relying on that report, the plaintiffs named Daniel Gagnon as the owner and driver in their claim. In his statements of defence, he admitted that he was the owner and driver. More than two years after the accident at a discovery, the plaintiffs discovered that the Gagnon vehicle was leased and the legal owner was the appellant, Daimler Chrysler, and took steps to add it as a party. Daimler Chrysler subsequently moved for summary judgment dismissing the action as being statute barred. The motions judge concluded that the plaintiffs did not have actual knowledge of the correct identity of the owner until examination for discovery, and that they showed reasonable diligence sufficient to satisfy the discoverability principle so that the action was not statute barred. On appeal, Chrysler argued that the motions judge erred as to discoverability because the plaintiffs failed to conduct a "Plate/VIN By Date" search. The Court of Appeal disagreed that such failure is fatal on the issue of discoverability in

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OTLA BLOG

Consolidated Practice Directions

UPCOMING EVENTS

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OTLA Fall Conference Building Blocks of Practice Excellence: A New Look Through Old Windows

**Mon., October 20 &
Tues., October 21, 2014**
Chairs:

Bill Elkin, Ron Bohm,
Claire Wilkinson & Maia
Bent
Metro Toronto
Convention Centre North
Building, Level 100, 255

light of *Velasco v. North York Chevrolet Oldsmobile Ltd.* The Court confirmed that the motions judge properly took into account all the circumstances relevant to the issue of discoverability. With respect to the special circumstances test applicable to the fatality claim, the Court confirmed that there was no error of fact or law that could justify appellate interference with the motions judge's decision concluding that there are sufficient special circumstances and no prejudice in this case. Both appeals were dismissed. [Read more on CanLII.](#)

Guerrero v. Trillium Dental Centre, 2014 ONSC 3871 (CanLII)

There are two summary judgment motions to dismiss the plaintiff's claim based on lack of experts supporting negligence and informed consent issues. The plaintiff sues for damages for personal injuries sustained during the course of a teeth whitening procedure administered by the defendant dental hygienist employed by the defendant dentists who operated Trillium Dental Centre. The plaintiff argued that an expert is not required because the procedure in question is not a "controlled act" within the meaning of the Regulated Health Disciplines Act and can be administered by anyone without specialized training. The plaintiff argued that this is a commercial transaction - breach of contract case rather than medical malpractice. James J. disagreed, noting that the use of chemicals and U.V. rays to bleach teeth and the use of appropriate safeguards to avoid burns or chemical reactions are all matters beyond the everyday experience and knowledge of a lay person. Evidence on the standard of care and how the defendant failed to meet it is necessary to assist the trier of fact. James J. found that the plaintiff's dental expert report does not qualify as an expert's report, does not meet the requirements of Rule 53.03(2.1) and does not provide an opinion. James J. noted that even in a non-medical malpractice case, the plaintiff must still tender opinion evidence by a qualified individual. James J. dismissed all claims based on negligence and breach of contract. James J. found that the claim regarding informed consent is a genuine issue for trial, noting that the issue is a question of whether the burn risk, which is acknowledged to be material, was discussed and whether the plaintiff would have proceeded anyway. On vicarious liability, James J. was not persuaded that the mere fact that the employee has insurance should nullify the usual principle that

Front Street West,
Toronto

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A Celebration of the Personal Injury Bar Dinner

**Fri., November 14, 2014,
6:00 p.m.**

Honourees:

Timothy P. Boland and
Sheldon A. Gilbert, Q.C.

Location:

The Ritz-Carlton
181 Wellington St. West,
Toronto

[Download the registration
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employers may be liable to third parties for the wrong doing of their employees occurring within the scope of their employment.

[Read more on CanLII.](#)

*Summaries provided by **Nga Dang**, a lawyer practising with Singer Kwinter in Toronto, Ont.*

Know of a case you think should be included here? Please submit it by email, along with a link to the decision on CanLII if appropriate, to Sarah Sinasac at ssinasac@otla.com.

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