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M A T T E R S

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Supreme Court of Canada Hears Cases:



CHILDS V. DESORMEAUX – SOCIAL HOST LIABILITY

by *Perminder K. Basran*

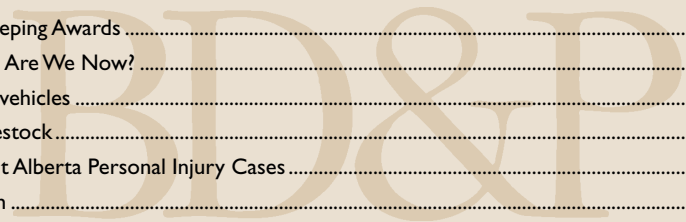
The Supreme Court of Canada has now made its pronouncement on the issue of social host liability in the case of *Childs v. Desormeaux* 2006 SCC 18.

Both the Ontario Trial and Court of Appeal decisions in this case were discussed in “Servers of Alcohol Beware” our May 2005 issue of *On Record*.

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In the Childs case, an accident was caused by a guest who was driving while intoxicated after leaving a party in a private home. That guest drove his vehicle into oncoming traffic, collided head on with another vehicle, killing one of the passengers and injuring three others, including Zoe Childs. Ms. Childs brought an action against the host of the party for the injuries she suffered. Both the trial judge and the Court of Appeal concluded (for different reasons) that the social hosts of the party did not owe a duty of care to the members of the public who were injured by the intoxicated guest's negligence.

In dismissing Ms. Childs' appeal, the Supreme Court of Canada all but shut the door on the concept of social host liability, stating that as a general rule a social host does not owe a duty of care to a person injured by a guest who has consumed alcohol. The Court did not make a distinction based on the fact that the event giving rise to the lawsuit was a BYOB party, and emphasized the liability in a social host situation rests with the drinking party. In the words of the Court:

A person who accepts an invitation to attend a private party does not park his autonomy at the door. The guest remains responsible for his or her conduct. (at p. 23)

In dismissing the Appeal, the Court followed the two part test for determining whether a duty of care arises, as first set out in *Anns v. Merton London Borough Council* [1978] A.C. 728.

The first part of the test is whether the relationship of the parties was close or proximate enough to give rise to a duty of care. The second branch of the test, if the first branch is met, is whether there are countervailing policy considerations that negate that duty.

The Court did not need to consider the second part of the Ann's test, resting its decision solely on the finding that the necessary proximity between the parties had not been established. In arriving at that conclusion, the Court addressed at length the differences between the commercial host and social host situations, including the fact that commercial hosts are in a better position to monitor consumption, have the sale and consumption of alcohol regulated for them by legislature and have a contractual relationship where profit-making and incentive to serve alcohol are relevant to the relationship.

In dismissing the argument that the host failed to act to keep their inebriated guest off the roads, the Court noted at p. 17:

Although there is no doubt that an omission may be negligent, as a general principal, the common law is a zealous guardian of individual autonomy. Duties to take positive action in the face of risk or danger are not free standing. Generally, the mere fact that a person faces danger, or has become a danger to others, does not itself impose any kind of duty on those in a position to become involved.

The Court is very clear that as a general rule, a social host does not owe a duty of care to users of the highway. While there could potentially be facts which are egregious enough for a Court to find a duty of care, at this time it appears that Canadian Courts are continuing to resist the imposition of social host liability for injuries caused by intoxicated guests. And even on an egregious set of facts, there is the chance that the Court may still resist liability based on public policy considerations.

Prior to the case of *Childs v. Desormeaux* being decided, there was some suggestion that it was "only a matter of time" before Canadian Courts would impose liability on a social host, similar to that of commercial hosts. That time has not yet come.

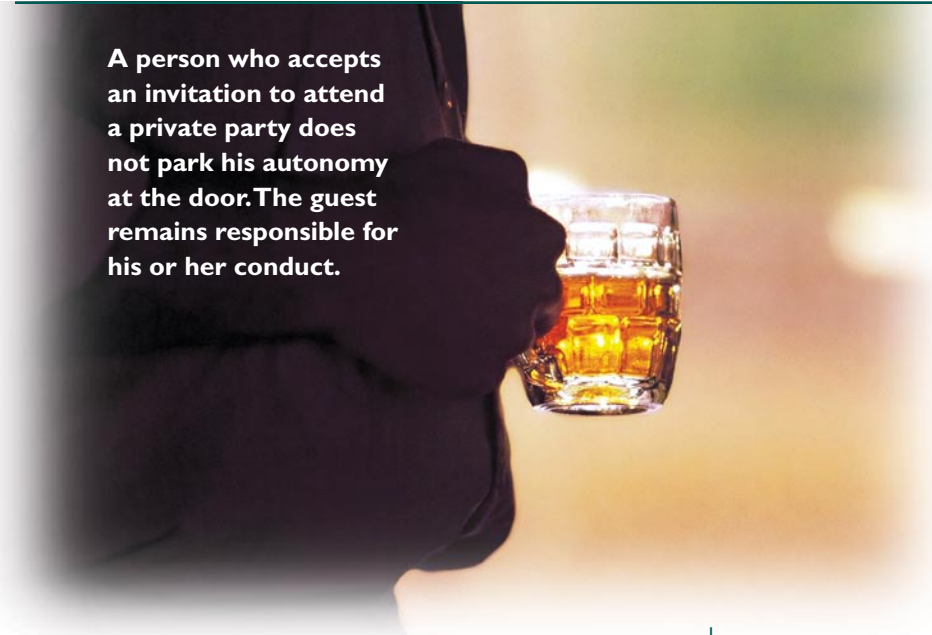
CASTILLO VS. CASTILLO – LIMITATION DATE FOR ACCIDENT IN FOREIGN JURISDICTION

Our December 2005 issue of *On Record* featured an article "Limitations of Actions Act Applied to Conflicts of Laws" which summarized the Alberta Court of Appeal's decision in *Castillo v. Castillo*. The issue in the case was the interpretation of s. 12 of the *Limitations Act* in Alberta, and whether its application meant that the two-year limitation period prescribed in Alberta or the one-year limitation period prescribed in California would apply to an action commenced in Alberta arising from a motor vehicle accident in California.

The Court of Appeal held that s. 12 would not remove substantive defences that were part of the substantive law of the place of the tort, such that the one-year limitation in California barred the action in Alberta even though the action was commenced prior to the two-year anniversary of the accident.

The Supreme Court of Canada concurred in the result, *Castillo v. Castillo* 2005 SCC 83, with 8 of the 9 justices agreeing with the reasoning of the Court of Appeal and the Honourable Mr. Justice Bastarache deciding on the basis that s. 12 of the *Limitations Act* was unconstitutional.

Accordingly, the law is settled in **Alberta** that the limitation period in Alberta for an action arising out of a tort in a foreign jurisdiction, will be the **earlier** of the limitation date prescribed in the foreign jurisdiction or Alberta.



A person who accepts an invitation to attend a private party does not park his autonomy at the door. The guest remains responsible for his or her conduct.

Recent Trends in Loss of Housekeeping Awards

by Rita R. Tripathy ¹

This article discusses the trends in loss of housekeeping claims from the year 2000 to the present. The most important trend to be aware of is the trend towards much lower awards, particularly in Calgary. A chart of the Alberta cases, including a synopsis of the facts and quantum award in each case, is available upon request.

GENERAL PRINCIPLES

The Alberta courts generally accept that housekeeping has real value and its loss ought to be compensated as long as evidence supports the loss of housekeeping claim. It is not necessary for the claimant to have replaced the lost services in order to be successful in advancing a claim. If the evidence in support of the claim is weak it is still not fatal to the claim, as the courts tend to simply award a lower amount or take into account statistical norms in determining the award.

The Court's prefer to make a calculation based on the particular evidence of the pre- and post-injury capacities of the complainant, converting the lost capacity into market value for replacement services. Statistical norms often play a valuable role in determining the calculations either alone or in conjunction with specific evidence. In general, the Courts are not concerned about whether the complainant actually intends to hire help. Recent case law indicates that even without financial outlay by the plaintiff, loss can be awarded.²

TRENDS IN LOSS OF HOUSEKEEPING AWARDS

The courts tend to calculate damages for loss of housekeeping claims in a variety of ways using a variety of methods, however there are some vague trends upon which we can comment.

In general, the less severe the injury and the greater the prospects of recovery from the injury, the greater is the tendency for the Courts to include some compensation for loss of housekeeping in the general damages award.



In addition, small lump sum loss of housekeeping awards and loss of housekeeping compensation included in general damages awards are more common when the evidence led about the claimant's pre-injury housekeeping habits is not very precise or strong.

The more concrete the evidence, the more likely the Courts are to use, or pay heed to, specific calculations. The general formula utilizes the market rate for replacement services³ multiplied by the number of hours "lost" by the claimant. Recent cases in Alberta recognize that Courts may award damages for loss of housekeeping not only for complete loss of ability, but also for loss of efficiency (on a percentage basis).⁴

Thus lost hours may be arrived at in one of two ways. One method is to determine the actual hours of housekeeping no longer performed by the complainant, or actual hours of housekeeping assistance the complainant now receives from others, as a result of the injury. If a plaintiff performed 10 hours of housekeeping per week previous to the injury and is now unable to perform any housekeeping, there are 10 lost hours per week. The other method to determine lost hours is to first determine loss of capacity as a percentage; an expert such as an occupational therapist usually assesses this loss of capacity. For example, an occupational therapist may give an opinion that the Plaintiff is only able to do housekeeping at 50% of the individual's previous ability of 10 hours, thus losing 5 hours per week. Alternatively, if a plaintiff performed 10 hours of housekeeping previous to the injury, and is still capable of performing the tasks but takes twice as long to perform them, the plaintiff is only 50% as effective as previously, and also has a loss of 5 lost hours. If the evidence on the pre-injury housekeeping hours is unclear, statistical norms are often used as a guide.

Expert witnesses (doctors, economists, and occupational therapists) default to statistical norms in preparing claims where concrete evidence about the particular claimant's pre- and post-injury lifestyles is lacking. Courts may (and often do) find the estimates of experts in such cases to be unreasonably high. It is common for judges to reduce the award by changing some figure(s) in the calculation, such as hours spent on housekeeping pre-injury, or substitute their own assessment altogether.⁵

Some argue that the method of calculating lost hours as a percentage of pre-accident ability may result in inaccurate awards and that awards under the head of loss of homemaking ability should be granted only in cases of clear pecuniary loss where the plaintiff can no longer perform certain tasks.

FACTORS THAT REDUCE OR INCREASE AWARDS

In addition to severity of injury, there are a number of factors that influence the quantum of housekeeping awards.

Some of those factors include the natural aging process, life expectancy, and mortality rates.

Factors that have led courts to decrease awards include evidence that:

- the complainant was employed full- or part-time pre-injury and devoted less time to housekeeping;
- the complainant had a pre-existing injury or illness that affected housekeeping ability;
- the complainant suffered from a degenerative pre-injury condition;
- the complainant has a small home;
- the complainant now spends more time at home and can be expected to devote more time to housekeeping;
- the evidence with respect to the amount of housekeeping required or previously performed is not credible; and
- the housekeeping claim overlaps with special or other damages;
- the complainant did not undertake or continue therapy that would have aided recovery.

Factors that have led courts to increase awards include evidence that:

- the complainant was a meticulous housekeeper;
- the complainant kept house for many family members;
- the complainant was a full-time homemaker with many responsibilities; and
- the complainant's duties included those associated with running a farm or ranch.

There tends to be two situations that attract the higher awards for loss of housekeeping, namely fatality cases and cases where the Plaintiff's household duties included farm or ranch duties, such as in *McLaren v. Schwalbe*⁶. These higher awards (i.e. in excess of \$20,000.-\$35,000.) are rare.

The majority of the Alberta loss of housekeeping awards, from the year 2000 to the present, are less than \$10,000.00, especially since 2005. The trend is definitely towards lower awards, particularly in Calgary.

The writers' view in regards to setting reserves

for a housekeeping claim is to the effect that reserves in the range of \$500. to \$5000. will be adequate in the majority of cases.

Footnotes

¹The writer gratefully acknowledges the assistance of Aaron Grach and Sheila Hyatt, Summer Research Students

²*Bebyck v. Ray*, [2005] A.J. No. 850

³The replacement services rate used in cases from the past 3 years tends to range from 9 to 12 dollars per hour.

⁴*Delahay v. Holder (Estate)*, [2005] A.J. No. 446 (Q.B.).

⁵For example see *Wiebe v. Loadmasters International Transportation*, [2005] A.J. No. 1004 (Q.B.)

⁶*McLaren v. Schwalbe* [1994] A.J. No. 58

Following the enactment of the Minor Injury Regulations and Diagnostic and Treatment Protocols on October 1, 2004, many in the insurance industry have been wading through the legislation by trial and error. While a number of injured persons (“Claimants”) have settled their claims under the cap of \$4,000, many remain unresolved. Some parties (mostly the Claimants/plaintiffs) are waiting for the Courts to hear the Constitutional and Charter challenges to the legislation, before considering settlement. Others are in the process of having independent medical practitioners make a determination as to whether their injuries are “minor”, and subject to the cap, or have caused a “substantial impairment”, and are not subject to the cap. The evaluations are conducted by “Certified Examiners”, and the report of the Certified Examiner regarding the nature of the injuries, is final and binding upon the parties.

According to the Regulations, if the party given notice does not agree with the proposed examiner, an alternate may be put forward, and failing an agreement the matter will go to arbitration.

In terms of the status of the court challenges, the process is slow because of the number of interested parties, including the Government of Alberta and the Insurance Bureau of Canada. The whole process is under the case management of the Associate Chief Justice of Court of Queen’s Bench. Plaintiffs’ counsel remain optimistic that the matter will go to trial before the end of 2006.

In the interim, many parties (Insurers and Claimants) continue to operate as if the legislation will stand, and are more frequently having the injured Claimant attend for an assessment by a Certified Examiner for a determination as to whether the Claimant’s injuries have created a substantial impairment.

If an Insurer and the Claimant disagree as to whether an injury resulting from the accident is minor or not, either party may give notice to the other requesting an assessment be conducted by a Certified Examiner, but not

MINOR INJURY REGULATIONS Where Are We Now?

by Patricia E. Olyslager



before 90 days following the accident. The party requesting the assessment will propose a Certified Examiner from a list of examiners, as stipulated by the Superintendent of Insurance. The party receiving Notice of a request for an assessment has 14 days to object to the proposed examiner, failing which, that party is considered to have accepted the examiner so proposed. According to the Regulations, if the party given notice does not agree with the proposed examiner, an alternate may be put forward, and failing an agreement the matter will go to arbitration. The list of examiners, as posted on the website for the Superintendent of Insurance, continually changes.

A Claimant must cooperate with the assessment process. If a Claimant fails to attend the examination, refuses to release relevant diagnostic, treatment or care information, or obstructs the examiner’s assessment in any way, the Claimant’s injury is deemed a minor injury. The cost of the assessment is born by the party making the request.

The current Forms (Notice Form MI-1; Form MI-3) Bulletins, Notices and List of Certified Examiners can be found at the Government of Alberta website <http://www.finance.gov.ab.ca/publications/insurance>.

Applying the 1% rule to unlocked vehicles

by Rita Tripathy & Susan Martyn, Student-at-Law

The current practice for insurers who are faced with the situation where an insured's vehicle is stolen and is subsequently involved in an accident, injuring a Plaintiff, is to deny the claim of the Plaintiff. The Administrator of the Motor Vehicle Accident Claims Act ("the Administrator") is then involved in the action given that the driver was driving without consent.

In recent months where a vehicle is stolen after the owner of the vehicle leaves it unlocked and running, the Administrator is taking the position that it should result in some liability to the insured owner for the resulting motor vehicle accident. It is the intention of the Administrator to insist that any Plaintiff who obtains a judgment for damages as a result of these circumstances is to commence an action against their liability insurer and have the issue resolved either for or against the policy of insurance before any payment will be considered by the Administrator.

The position of the Administrator is based on the "1% Rule". While the *Contributory Negligence Act* would require two tort-feasors to make contribution to and indemnify each other in the degree to which they are respectively found to be at fault, the Administrator is not a tort-feasor, and has the statutory privilege of being able to resist payment if an insured defendant is in any way liable. This is due to the fact that if the insured defendant is even 1% liable, the plaintiff could collect 100% from the insured's insurers. The way this plays out is that if an insured defendant and an uninsured driver are both at fault, there will be a judgment to the effect that they are jointly and severally liable to the plaintiff. The plaintiff would be entitled to seek payment

of the judgment from either co-defendant. If the plaintiff applies for payment of the judgment from the Administrator, the Administrator would deny payment pursuant to section 11(f) and 11(d)(ii) of the *Motor Vehicle Accident Claims Act* ("the Act"). Accordingly, the plaintiff is compelled to seek 100% of the judgment from the insured co-defendant. The co-defendant's insurers are precluded from looking to the Administrator for reimbursement of the uninsured driver's share of the judgment pursuant to s. 11(c) of the *Act*.

There appears to be some basis in law for the Administrator's position on liability vis-à-vis those who leave keys in an unlocked car. The case of *Kalogeropoulos v. Ottawa (City)* (1996), O.J. No. 3449 (Ont. C.J.) ("*Kalogeropoulos*"), for example, involved the driver of a one-tonne truck. The driver had parked the truck in the parking lot of an all-night donut shop, leaving the doors unlocked and idling. While the driver was in the restaurant, a heavily intoxicated man got into the truck and sped away. This thief was subsequently involved in an accident with a taxi, causing serious injury to the taxi driver. The trial decision pivoted on the issue of foreseeability. The Court reasoned that the accident should have been reasonably foreseeable to the defendant as the donut shop was in close proximity to a number of bars, which meant that intoxicated individuals loitered in the area. The Court then took this reasoning one step further, holding that the defendant should have foreseen that a panicked thief would travel at high speeds, posing a real and substantial risk of damage to others. The Court thus concluded that, "...[the driver] had created the chain of events that led to the collision by leaving the truck running with the doors unlocked" (at para. 52). The driver was found to be entirely liable for the damage to the taxi and taxi driver.

There is however, a larger body of caselaw that finds otherwise—that an individual who leaves his or her car running, or the keys accessible, with the doors unlocked, will not be held liable in the event that that vehicle is stolen and is involved in an accident. The case of *Norgard v. Asuchak*, [1994] A.J. No. 394 (Q.B.) (“*Norgard*”), for example, involved a group of teenagers who stole a car from a private driveway. At the time of the theft, the vehicle’s doors were unlocked and its keys were in the ignition. The owner normally left his vehicle in his garage, with the keys in the ignition, and on this night left it in the driveway. He had had no previous issues at his residence with vandalism, trespassers or thieves. While travelling at high speeds, one of the teenagers lost control of the stolen car, causing the vehicle to roll over. The accident severely injured one of the passengers. In assessing the owner’s liability for the accident, Yanosik, J. focussed on the issue of foreseeability. He held that in order for the car’s owner to be liable for the passenger’s injuries, it must have been foreseeable that the car could be stolen and that the car would, thereafter, be operated in such a manner so as to injure someone. To this end, Yanosik, J. found that:

In the circumstances of this case I am of the opinion that it cannot be said that it should have been reasonably foreseeable that the automobile would have been taken, let alone, that some hours after it had been taken, someone would operate it in such a negligent fashion that an injury would occur (at para. 27)

Yanosik, J. concluded that there was no liability on the part of the car’s owner.

Similarly, *Campiou Estate v. Gladue*, 2002 A.B.Q.B. 1037 (“*Campiou*”) involved an owner who left his truck in his driveway with the keys in the ignition. The truck was subsequently stolen by a group of teenagers, an accident followed and one of the passengers was killed. The deceased’s family initiated an action against the owner of the vehicle and the parties who had stolen it. At trial, the Court devoted significant attention to the question of whether the truck had been locked at the time of the theft. In the end, the Court concluded that this inquiry was moot, as the owner owed no duty of care towards the deceased, explaining its public policy considerations as follows:

However careless [the owner] might have been in securing the truck, that carelessness should not result in a liability by him to any of the truck’s illegal occupants. It would be offensive to society’s standards to hold the truck owner liable for injuries suffered by those participating in the theft of the truck, a joy ride and a rollover causing injury to any participating occupants (at para. 44).

In *Tong v. Bedwell*, [2002] A.J. No. 263 (Q.B.) (“*Tong*”), a driver was stopped at an intersection when a vandal smashed his windshield. The driver turned the vehicle off and proceeded to chase the vandal on foot, leaving the doors unlocked and the keys in the ignition.

When the driver returned to the intersection, he discovered that his car had been stolen. In the interim, a thief had taken the car and had crashed into a second vehicle, several blocks away. At trial, Lee, J. set out a two-part test for attributing liability: (1) it must be reasonably foreseeable that, in the event that a vehicle is left unlocked with the keys inside, it will be moved by a person who is not authorized to move it; and (2) it must be reasonably foreseeable that the person who moves the vehicle will operate it in such a manner so as to cause injury to a third party. Applying this test to the situation at hand, Lee, J. found that:

...it is reasonably foreseeable that a vehicle left unattended with the keys inside would be stolen. However, it is not reasonably foreseeable that a stolen vehicle would be operated in such a manner that would cause damage to a third party’s vehicle, since the intervening and negligence of a thief in operating a stolen vehicle in such a manner that would cause damage to a third party’s vehicle parked moments away is not reasonably foreseeable (at para. 54).

Lee, J. further stated that the thief’s action constituted a *novus actus interveniens*—an event that broke the chain of causation between the owner’s actions and the damages. As a result, the owner of the stolen car was not liable for the damage to the third party vehicle.

As is illustrated by *Kalogeropoulos*, there is some basis in law for the Administrator’s position that drivers who leave their cars unlocked with the keys in the ignition should be partially liable for ensuing damage in the event that their car is stolen. However, a number of Alberta cases—*Norgard*, *Campiou* and *Tong*—have found no liability on the part of the owner in somewhat similar circumstances.

As mentioned above, the Administrator is insisting that Plaintiffs, who obtain a Judgment for damages as a result of the unlocked vehicle circumstances, commence an action against the liability

insurer and have the issue resolved either for or against the policy of insurance before the Administrator will consider any payment. The Administrator is suggesting to insurers in these situations that they keep their files open. Insurers can expect to receive a letter from the Administrator in these circumstances where they deny liability to the Plaintiff.

The writers recommend that while it is important for the insurer to know of this position that they should not be handling their files any differently. Namely, insurers

should continue to deny liability where the insured’s vehicle is stolen even where the insured has left the keys in the ignition and the doors unlocked. The Administrator is not actually requiring any action by the insurance companies at this stage, however is sending warning letters to the insurer that a Judgment might be granted against the insurer. The current case law would suggest that in most cases the Administrator will not likely be successful in finding that there should be some liability on the owner of the stolen vehicle.

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Harry Neitz and Maureen Neitz *et al v. Keith Charles Anderson* (unreported) is a recent case in which Section 5 of the *Stray Animals Act*, R.S.A. 2000, c. S-20, of Alberta, (“the Act”) was judicially considered. Section 5 essentially provides that where livestock trespass causing damage to real or personal property, the owner is liable for damage.

Approximately 50 head of cattle escaped from a rural property owner’s (Anderson’s) fenced grazing enclosure, travelled approximately one kilometre and entered a neighbour’s (Neitz’s) canola field through an open gate, causing damage to the crop. Neitz sued Anderson in an action for trespass and negligence, claiming damages and pleading the *Act*.

At trial Neitz argued that a cattle owner was strictly liable for the damages under the *Act* or alternatively was liable under the common law principle of negligence. The Defendant Anderson took the position that he had taken all reasonable precautions to ensure the property fences were in good repair and that he monitored his livestock regularly; therefore was not negligent. How the gate came to be open, was not explained, Anderson simply denied any responsibility.

Historically, there are no reported cases in which any part of the *Act* has been considered. At trial, the Court applied the *Act*, stating that the *Act* imposed strict liability for such occurrences, and may in fact impose absolute liability. The trial judge did not elaborate on this comment, and may have adopted the comment and reasoning from a Saskatchewan case, *Korpach v. Klassen*, [2000] S.J. No. 369 (Sask. Prov. Ct.).

The trial decision was appealed on two grounds. First, on the ground that the *Act* did not impose strict or absolute liability, but if it did, the defence of due diligence was available. Secondly, if legislation is to abrogate or change the common law, then it must do so in clear and precise terms. The Appeal Court, although disagreeing with the Trial Judge’s reasoning, found that the *Act* applied. The Appeal Court found that the historical common law of “Cattle Trespass”, as a strict liability offence, was different and distinct from other regulatory offences classified as strict liability, and as such, the defence of due diligence was not available. And, in any event, the historical common law defences for cattle trespass, being acts of third parties or acts of God, were incorporated in sections 6 and 7

Stray Animals Act: Fencing the Livestock

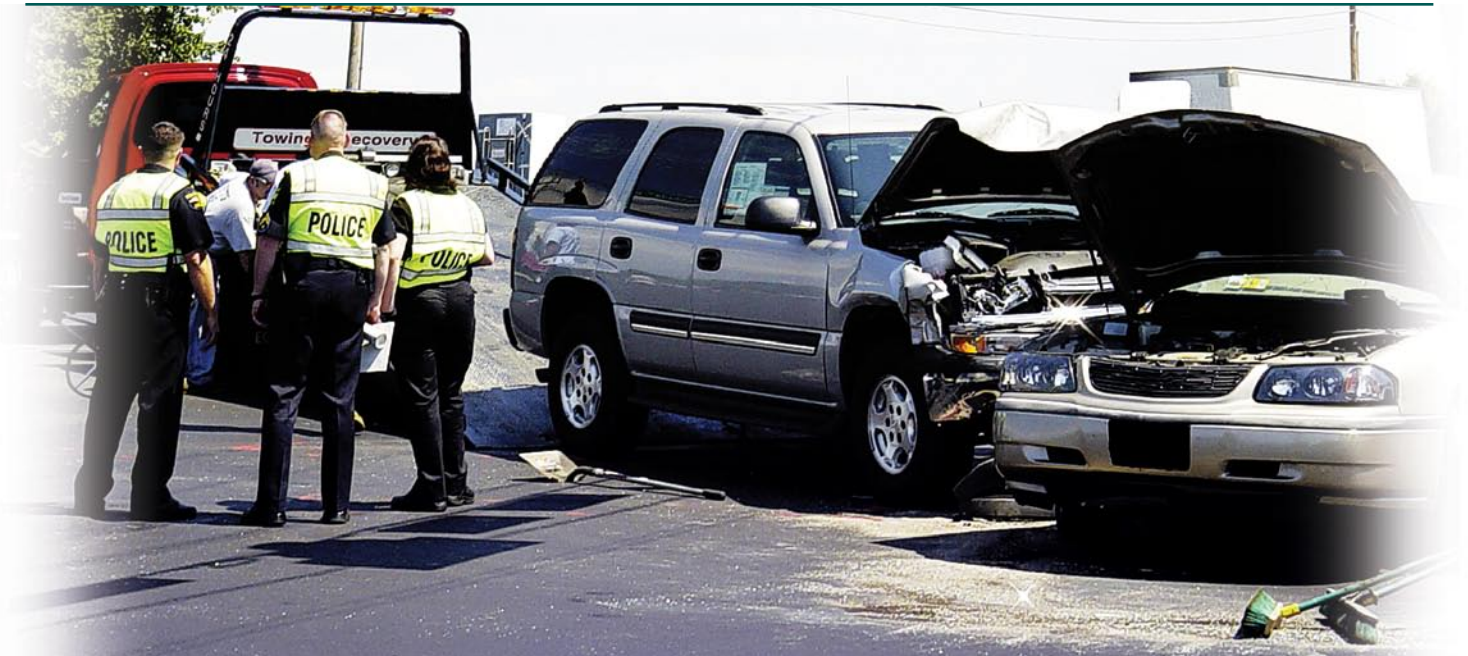
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of the *Act*. The Appeal Court interestingly rejected any comparisons of the *Act* to similar legislation in the other Provinces, stating simply that the purposes and subject matters were not comparable to the Alberta statute.

At present, the only judicial consideration of the *Act* suggests that there will be very limited instances in which domestic animal owners would be able to avoid liability for damages caused by livestock straying onto another person’s property.

Notwithstanding the Court’s interpretation of Section 5, a close reading of Sections 37 and 38 of the *Act* appear to indicate that, in the event livestock strays, or is allowed, to be on a highway (other than highways within an Indian reserve or under various grazing permits or leases) and while on the highway causes injury or damage, the *Act* does not apply. In such case, civil liability will be determined under the principles of negligence.



General Damage Awards in Recent Alberta Personal Injury Cases

by Ben Aberant, Summer Research Student

In *Gilroy v. Schmidt*, [2006] A.J. No 328, 2006 ABQB 214, the plaintiff suffered **soft tissue injuries** in an automobile accident, experiencing neck and shoulder pain and headaches. An MRI revealed a disc herniation, along with damage in the cervical spine and nerve roots. However, expert evidence at trial revealed that the neurological symptoms and the disc herniation were not caused by the accident; rather the accident was found only to have aggravated a pre-existing condition. As the plaintiff did not experience any symptoms prior to the accident, the Court awarded general damages in the amount of \$40,000.

In *Paesch v. Teskey*, [2005] A.J. No. 716, 2005 ABCA 209, the Alberta Court of Appeal increased the amount of general damages awarded. The plaintiff was injured when a car ran a red light and struck the plaintiff's car, causing **chronic pain** for the plaintiff. The trial jury awarded general damages of \$975., accepting evidence that the plaintiff's arthritis was not caused by the accident. The Court of Appeal increased general damages to \$5,000. finding the award at trial was unreasonably low for short-term pain and suffering.

In *Sinclair v. Wong*, [2005] A.J. No 642, 2005 ABQB 369, an automobile mechanic was injured in a car accident when a car ran a red light. The plaintiff suffered a **fractured sternum** resulting in chest, neck and lower back pain. The damage award of \$228,448. was reduced by 10% to take into account the fact that the plaintiff had been diagnosed with spondylolisthesis, a forward displacement of one vertebra over another, prior to the collision. Even though the pre-accident condition was asymptomatic, the Court reduced the damage award given the possibility that the spondylolisthesis may have become symptomatic without the accident.

In *Delahay v. Holder (Estate)*, [2005] A.J. No. 446, 2005 ABQB 283, a plaintiff who worked at home suffered an injury to her right **shoulder** during an automobile accident. While the plaintiff began physiotherapy treatments, she discontinued the treatments prematurely. The Court found that her discontinued treatment constituted a failure to mitigate losses. The Court awarded general damages in the amount of \$70,000. but reduced the award by 20% for the mitigation issue. The plaintiff's claim for loss of opportunity to earn income was rejected, as it was determined that it was unlikely that the Plaintiff would have worked outside the home in any event. The plaintiff was also awarded \$15,000. for future loss of housekeeping capacity, \$5000. for loss of consortium and \$5000. for costs of future care.

In *Cartier v. Park (c.o.b. Extra Miles (1991) Esso Service Station)*, [2005] A.J. No. 455, 2005 ABQB 294, the plaintiff was sprayed with a small amount of gasoline by a negligent gas station attendant. While the plaintiff sought \$200,000. for **emotional trauma** from a gasoline drenching, the Court found that the actual amount that was spilled was not nearly enough to douse the plaintiff. In addition to finding the Plaintiff lacked credibility, the Court considered that the plaintiff had an extensive history including depression, anxiety and panic attacks, and that she would have continued to experience these problems despite the gasoline incident. The plaintiff was awarded general damages of \$1,500.

In *Faltous v. Mckinley*, [2005] A.J. No. 1414, 2005 ABQB 725, a husband and wife were driving an SUV that was rear ended when it stopped at an intersection. Mr. Faltous suffered a **mild soft tissue injury** involving his shoulder, neck and index finger. His injury did not persist after two and one half years. However, with continued pain and an inability to perform certain activities, Ms. Faltous suffered from the effects of the accident due to a **mild to moderate musculo skeletal injury**. Finding both plaintiffs to be extremely credible witnesses, the husband and wife were awarded general damages of \$18,000. and \$24,000. respectively.

In *Robinson v. Williams Estate*, [2005] A.J. No. 1125, 2005 ABQB 659, the plaintiff was a passenger in a vehicle, which rolled off the road while being driven by a drunk driver. The plaintiff's **right arm** was permanently impaired, the accident tearing the brachial and auxiliary arteries. The plaintiff was awarded \$150,000. in non-pecuniary damages reduced by 25% as a result of his contributory negligence.

In *Wiebe v. Loadmasters International Transportation*, [2005] A.J. No. 1004, 2005 ABQB 525, the plaintiff had been struck head on by a tractor-trailer, requiring the jaws of life to remove him. The plaintiff underwent numerous surgeries, was hospitalized for 66 days and suffered multiple injuries including **fractures, dislocations and nerve damage**. As well, the plaintiff required considerable hardware to be inserted in his body, and suffered permanent limitations on his ability to work. He was awarded \$150,000. in general damages.

In *Goertzen v. Sandstra*, [2005] A.J. No. 1134, 2005 ABQB 623, the plaintiff was involved in two motor vehicle accidents, 2 years apart. The Court apportioned liability equally between the two defendants, as it was not possible to ascertain degrees of fault. The first accident caused the plaintiff to stop working, due to **chronic pain**. The second accident worsened the plaintiff's difficulties, increasing his **psychological problems**, which intensified his physical injuries. General damages were awarded in the amount of \$70,000.

In *Reimer v. Polgar*, [2005] A.J. No. 373, 2005 ABPC 65, the plaintiff suffered a grade-one **whiplash injury** after being struck from behind in an automobile accident. She had been in an accident about 10 months earlier, but had recovered to 80 per cent of her pre-first accident condition. The Court accepted testimony that the new accident increased her vulnerability to re-injury, potentially causing chronic pain and discomfort. She was awarded non-pecuniary damages of \$1,500 per month for 11 months plus \$3,000 for intermittent pain likely to be suffered in the future.

In *Worton v. Blacks*, [2006] A.J. No 41, 2006 ABQB 46, a plaintiff with a poor employment record was injured after being struck from behind in a motor vehicle accident. He claimed that the accident triggered a **catastrophic depressive episode** that prevented him from working. However, the plaintiff failed to meet the standard of proof required to prove psychological damages. The Court awarded general damages in the amount of \$23,000., which included 3% permanent partial disability.

In *Larsen v. Bell*, [2005] A.J. No. 1944, 2006 ABCA 97, the Alberta Court of Appeal upheld a decision of the trial judge in a case involving damages for **whiplash and fibromyalgia**. This case involved two accidents, the second one aggravating the whiplash sustained in the first. The lower court awarded \$40,000. for whiplash, finding the plaintiff had failed to prove that the accident caused the fibromyalgia. The Court of Appeal found no error in the trial judge's reasoning.



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