RIMS CANADA Conference

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Session 4B

QUICK HITS
–LEGAL HOT TOPIC REVIEW

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Damages & Torts: What's new and where are we headed?

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BURCHELLS LLP
JUST RIGHT

1. Tort of invasion of privacy/intrusion on seclusion

2. Causation and apportionment – the Supreme Court of Canada weighs in…. again

3. CPP disability benefits: deductible from future income loss? Depends on the province you are in.

Tort of Invasion of Privacy

- ***Jones v. Tsige* 2012 ONCA 32**
  - Created the common law tort of invasion of privacy in Ontario
  - Provided some guidance with respect to damages for the tort
  - Provided guidance on what constitutes an intrusion on seclusion, or invasion of privacy

Background

- Some provinces have legislation that allows individuals to sue other individuals for an invasion of their privacy *[BC, Manitoba, Quebec, Newfoundland and Labrador]*
- Ontario has legislation that protects individuals against an invasion of privacy by government or big business, but not from each other. *[Ontario's Freedom of Information and Protection of Privacy Act]*

Jones v. Tsige - Facts

- Jones and Tsige worked at different branches of the same bank
- Tsige was involved in a common law relationship with Jones' ex-husband
- Over a period of 4 years, Tsige looked at Jones' banking information 174 times
- Tsige admitted she had no valid reason to look at Jones' information
- Tsige did not publish, distribute or record any of the information

- Jones claimed that Tsige had irreversibly destroyed her privacy interest.
- Jones sought:
  - $70,000 damages for invasion of privacy and breach of fiduciary duty
  - $20,000 aggravated and punitive damages
- Tsige brought a summary judgment motion which was granted because the motions judge concluded there was no tort of invasion of privacy.

- Ontario Court of Appeal considered:
  - Ontario cases that seemed to be “open” to such a tort
  - Cases from other jurisdictions that seemed to support the idea of an invasion of privacy tort
    - Manitoba
    - PEI
  - *Charter* jurisprudence that recognized:
    - Personal privacy interests
    - Territorial privacy interests
    - Informational privacy interests
  - The evolution of legislation addressed at issues of privacy
    - PIPEDA, FOIPOP, etc…
  - American acceptance of the tort of invasion of privacy
  - Commonwealth cases that recognize a tort of breach of privacy

- Para. 66

  "In my view, it is appropriate for this court to confirm the existence of a right of action for intrusion upon seclusion. Recognition of such a cause of action would amount to an incremental step that is consistent with the role of this court to develop the common law in a manner consistent with the changing needs of society."

- Para. 67:

  "… In modern times, the pace of technological change has accelerated exponentially. Legal scholars such as Peter Burns have written of 'the pressing need to preserve privacy which is being threatened by science and technology to the point of surrender.'"

Elements of the action of “intrusion on seclusion”

1. The act must be intentional
2. The defendant must have invaded the plaintiff’s private affairs or concerns without lawful justification
3. A reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.

- Adopted the elements set out in the US in the *Restatement (Second) of Torts (2010):*
  - *One who intentionally intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the invasion would be highly offensive to a reasonable person.*

Damages

- Proof of damage is NOT required
- Where the plaintiff has suffered no provable pecuniary loss, the damages fall into the category of “symbolic” or “moral” damages.
- The Court neither encourages nor excludes an award of aggravated and punitive damages
- Damages should be modest but sufficient to address the wrong that has been done.
- The Court set the upper range of damages at $20,000
- Because of the longstanding and numerous breaches by Tsige, the Court considered Jone’s damages to be in the “mid-range” and awarded $10,000.

Factors to consider in assessing damages:

1. The nature, incidence and occasion of the defendant's wrongful act;
2. The effect of the wrong on the plaintiff's health, welfare, social, business or financial position;
3. Any relationship, whether domestic or otherwise, between the parties;
4. Any distress annoyance or embarrassment suffered by the plaintiff arising from the wrong; and
5. The conduct of the parties, both before and after the wrong, including any apology or offer of amends made by the defendant.

Limitations on the tort

- No intention to open the floodgates. Only meant for deliberate and significant invasions of personal privacy.
- Para. 72: *"Claims from individuals who are sensitive or unusually concerned about their privacy are excluded: it is only intrusions into matters such as one's financial or health records, sexual practices and orientation, employment , diary or private correspondence that, viewed objectively on the reasonable person standard can be described as highly offensive."*

Where will this take us?

- ***Alberta v. A.U.P.E.*, 2012 CasrwellAlta 896, Alberta Arbitration Board**
  - Claim by 26 government employees for damages due to an unjustified check on their personal affairs.
  - Maintenance Enforcement Program discovered fraudulent cheques being passed. In an effort to determine the culprit a peace officer checked the Equifax credit report database for all employees to see if any were in serious financial difficulty and may have a motive to pass fraudulent cheques.

- Employees filed complaints with Alberta Information and Privacy Commissioner.
- Government conceded the searches were in violation of the *Freedom of Information and Protection of Privacy Act.*
- The information was not disclosed.
- The complainants each received a letter of apology.
- Each griever received damages of $1,250.

Complex Services Inc. v. O.P.S.E.U., Local 278, 2012 CarswellOnt 3177

- Casino (employer) grievance claiming that the union and employee did not meet their obligations regarding the employee's disabilities and accommodation requirements.
- The employee did not want to submit to medical assessments nor be forced to take time off if the employer deemed her unfit to be working.
- Union claimed that the employee was not required to submit to an inquiry into her medical affairs and such an inquiry was an invasion of privacy, per *Jones v. Tsige*.

- para. 92:

  I agree with the Union that Jones v. Tsige reinforces the premium value of privacy in Canadian society. But the decision does not establish an additional premium or value in that respect.

  I agree with the Employer that whatever Jones v. Tsige actually stands for in terms of the non-legislated or non-contractual right to privacy, it does not stand for the proposition that asking for or even demanding that an employee disclose confidential medical information for a legitimate purpose constitutes an improper or actionable intrusion on the employee's right to privacy. Jones v. Tsige does not posit any absolute right to privacy.

  It remains the case that an employer is entitled to request and receive an employee's confidential medical or other information to the extent necessary to answer legitimate employment related concerns, or to fulfill its obligations under the collective agreement or legislation, including the human rights or health and safety legislation (for example).

Insurance implications

- If an insurer commits a breach of the privacy of its insured or a claimant, will there be tort consequences for the insurer?
- Unique claims being created (a la *Complex Services*)?
- Is it covered?
  - Eg. Corporate insured fails to adequately protect a client's contact information and the client suffers harm. Is there a duty to defend and indemnify the corporation under their CGL policy?
- Possible changes to policy wordings to either include or exclude coverage, similar to the provisions regarding defamation?
- If there is a statutory remedy, can the plaintiff choose to proceed under statute or tort? Can they get a remedy from both?

Causation

"But For" vs. "Material Contribution"

Athey v. Leonati, [1996] 3 SCR 458

Resurfice v. Hanke, 2007 SCC 7

Clements v. Celements, 2012 SCC 32

Athey v. Leonati

- Athey was an autobody repairman, and had a history of back problems.
- Involved in an MVA February 1991. Back and neck injuries.
- Two months later, second MVA. Same injuries.
- Attended a gym on his doctor's advice and suffered a disc herniation.
- Trial judge found that the MVAs contributed in only a minor way to the disc herniation, and the herniation was primarily due to the plaintiff'spre-existing back problems.

- Causation is typically established on the basis of the “but for” test, i.e., but for the defendant’s negligence, the plaintiff would not have suffered the loss.
- The plaintiff does not need to prove that the defendant’s negligence was the sole cause of the loss. It is sufficient to establish that the defendant’s conduct “materially contributed” to the loss.

Resurfice v. Hanke

- Hanke was operating an ice-resurfacing machine at an Edmonton rink. He was horribly injured when he put water into the gas tank and caused an explosion.
- Hanke claimed the water tank and the gas tank were too close together and looked too much alike. He claims the manufacturer and distributor were negligent in the design of the machine.

Resurfice v. Hanke

- Was Hanke's injury due to the defendants' negligence? Or was it due to his own error?
  - Trial: dismissed Hanke's claim. The trial judge found that Hanke was not confused, he knew the difference between the tanks and the design of the machine was not the cause of the accident.
  - Court of Appeal: the trial judge failed to consider the comparative blameworthiness of the plaintiff and the defendants. He should have applied the material contribution test.
    - *"Where there is more than one potential cause, the 'material contribution' test should be used."*

Resurfice v. Hanke - SCC

First, the basic test for determining causation remains the "but for" test. This applies to multi-cause injuries. The plaintiff bears the burden of showing that "but for" the negligent act or omission of each defendant, the injury would not have occurred. Having done this, contributory negligence may be apportioned, as permitted by statute.

Resurfice v. Hanke - SCC

- The material contribution test only applied in special circumstances:
  - Where it is impossible to prove that the defendant's negligence caused the plaintiff's injury using the "but for" test.
    - Impossibility must be due to factors that are outside the plaintiff's control, such as the limits of scientific knowledge.

    and
  - Plaintiff must show a breach of duty by the defendant that exposed the plaintiff to an unreasonable risk of injury.

Resurfice v. Hanke - SCC

- Unanimously found that the Court of Appeal failed to pay deference to the reasoned findings of the trial judge. The trial judge made no errors of law.
- The trial evidence supported the finding that the plaintiff was not confused and knew the difference between the tanks. The plaintiff had not proven that he would not have been injured "but for" the negligence of the defendants.

Clements v. Clements

i.e., the "robust" approach

- The plaintiff was a passenger on her husband's motorcycle, which was overloaded by 100 lbs.
- The motorcycle driver attempted to pass another vehicle.
- A nail that had punctured the bike's rear tire fell out, and the tire started to deflate during the passing manoeuvre.
- The driver lost control and crashed. The plaintiff was seriously injured.

Clements v. Clements

- The defendant driver did not dispute his negligence in the operation of the motorcycle but contested the allegation that it was his negligence that caused the plaintiff's injuries.
- Defendant presented expert evidence that said the probable cause of the accident was the tire puncture, which was beyond his control.
- Following the defendant's theory, the plaintiff would still have been injured "but for" the defendant's negligence.

Clements v. Clements

- Trial: the plaintiff was not able to prove that she would not have been injured but for the defendant's acts.
  - The plaintiff's inability to prove this was due to the limitations of the scientific expert evidence, so the material contribution test ought to be applied.
- Court of Appeal: The material contribution test did not apply. The but for test ought to have been used and the plaintiff had not proven her case using the but for test.

Clements v. Clements - SCC

- The trial judge's reasoning essentially made scientific proof a requirement when attempting to find causation using the but for test, and this was an error.
- The trial judge erred in applying the material contribution test.
- A new trial was ordered because the SCC could not determine what the trial judge would have concluded if he had applied the right test.

Clements v. Clements- SCC

- At para. 14:

  "But for" causation and liability on the basis of material contribution to risk are two different beasts. "But for" causation is a factual inquiry into what likely happened. The material contribution to risk test removes the requirement of "but for" causation and substitutes proof of material contribution to risk.

Clements v. Clements - SCC

- At para. 16:

  Elimination of proof of causation as an element of negligence is a "radical step that goes against the fundamental principle stated by Diplock L.J. in Browning v. War Office, [1962] 3 All E.R. 1089 (C.A.), at pp. 1094-95: '…[a] defendant in an action in negligence is not a wrongdoer at large; he is a wrongdoer only in respect of the damage which he actually causes to the plaintiff'": Mooney v. British Columbia, 2004 BCCA 402, 202 B.C.A.C. 74, at para. 157, per Smith J.A., concurring in the result. For that reason, recourse to a material contribution to risk approach is necessarily rare, and justified only where it is required by fairness and conforms to the principles that ground recovery in tort.

Clements v. Clements - SCC

- *Resurfice's* statement of the test for when the material contribution approach can be used was incomplete. What does it mean to be "impossible to prove"? What substratum of negligence must be shown?

Para. 46: The SCC's conclusions regarding the present state of the law in Canada:

(1) As a general rule, a plaintiff cannot succeed unless she shows as a matter of fact that she would not have suffered the loss "but for" the negligent act or acts of the defendant. A trial judge is to take a robust and pragmatic approach to determining if a plaintiff has established that the defendant's negligence caused her loss. Scientific proof of causation is not required.

(2) Exceptionally, a plaintiff may succeed by showing that the defendant's conduct materially contributed to risk of the plaintiff's injury, where (a) the plaintiff has established that her loss would not have occurred "but for" the negligence of two or more tortfeasors, each possibly in fact responsible for the loss; and (b) the plaintiff, through no fault of her own, is unable to show that any one of the possible tortfeasors in fact was the necessary or "but for" cause of her injury, because each can point to one another as the possible "but for" cause of the injury, defeating a finding of causation on a balance of probabilities against anyone.

Future Income Loss and Collateral Benefits (CPP)

- Traditional common law rule:
  - A plaintiff is to be made whole and not receive double recovery for financial loss, except in certain circumstances.
  - CPP fit within the private insurance exception to double recovery, and was not deductible from loss of income awards, either past or future.

Ontario position post-2003

***Meloche v. MacKenzie*, 2005 CarswellOnt 2150**

- The addition of s. 267.8(1) of the Ontario *Insurance Act* in 2003 was an *"…overt attempt by the Legislature to eliminate double recovery in tort awards arising out of claims for damages on account of injuries sustained in motor vehicle accidents."* [para.11]
- Found that CPP disability benefits are tied to a recipient's inability to engage in the act of gainful employment, in other words, as a result of a loss of earning capacity.

Ontario position post-2003

- CPP disability benefits received by a plaintiff before trial would be deductible from an award for past income loss.
- CPP disability benefits received after trial are also deductible and are subject to a trust in favour of the defendant.

NS Position post-2003

- NS *Insurance Act*, s. 113A is worded similarly to Ontario's s. 267.8:

  In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for income loss and loss of earning capacity shall be reduced by all payments in respect of the incident that the plaintiff has received or that were available before the trial of the action for income loss or loss of earning capacity under the laws of any jurisdiction or under an income-continuation benefit plan if, under the law or the plan, the provider of the benefit retains no right of subrogation.

NS Position post-2003

- Many took this wording to mean that the payments to be deducted included only those that were received before trial, and could therefore only apply to past income loss – not future.
- The difference between NS and Ontario's Insurance Acts:
  - Ontario s. 267.8(9) and 267.8(10) provide that any payments the plaintiff received after the trial for income loss or loss of earning capacity are to be held in trust for the plaintiff to be paid to the persons from whom damages were recovered.
- There is no such provision in NS

NS Position post-2003

- In ***McKeogh v. Miller*, 2009 NSSC 394**, Justice Scaravelli looked at the Ontario position and concluded that the changes to the NS Insurance Act in 2003 were made with the same intention as the changes to the Ontario insurance scheme, i.e., to avoid double recovery.
- Despite the lack of reference in the NS Act to a trust for future payments received, NS intended to capture CPP disability benefits as a source of payments that are deductible from a future income loss calculation as well as a past loss.

BC position

- ***Kean v. Porter*, 2008 BCSC 1594**
  - The court acknowledged that there is an overlap in recovery but refused to depart from the traditional common law rule. CPP disability benefits are not to be deducted from tort awards for past *or* future loss.

    "The other side of the coin is that to deduct the CPP benefits from a tort award is to force the injured contributor to share the benefits of his contributions, (which represent deductions from his former earnings), with the tortfeasor." [para. 108]

NB Position

- S. 265.4(1) NB *Insurance Act:*

  "In an action for damages arising out of an accident, the amount recoverable by the plaintiff as damages for loss of income between the date of the accident and the date of the judgment shall, subject to subsection (4), be reduced by….."

  There has not been judicial consideration of this section yet.

Other provinces

- Other provinces have not had cases that explicitly comment on this issue.
- Unless a province has enacted legislation similar to that in Nova Scotia or Ontario, the presumption should be that the common law private insurance exception to double recovery still applies to CPP disability payments.

QUESTIONS?

AN EXAMINATION OF JURISDICTION AND FORUM

Jennifer Pereira

- The issue of jurisdiction is a matter of considerable significance.

- Should the need for adjudication arise, disagreement between the parties can often ensue as to which forum is properly entitled to hear the case.

Club Resorts Ltd. v. Van Breda

Club Resorts Ltd. v. Van Breda

- The Supreme Court of Canada set out a system of principles and rules that ensures predictability in the law governing the assumption of jurisdiction by a court.

Jurisdiction

Real and substantial connection test:

- the defendant is domiciled or resident in the province;
- the defendant carries on business in the province;
- the tort was committed in the province; and
- a contract connected with the dispute was made in the province

Jusrisdiction

Real and substantial connection test:

- The list of presumptive connecting factors is not finite, and may be reviewed or augmented over time.
- LeBel J. writes:

  "identifying new presumptive factors, a court should look to connections that give rise to a relationship with the forum that is similar in nature to the ones which result from the listed factors."

Jurisdiction

- If no presumptive factors exist, the court must dismiss or stay the action.
- Even if jurisdiction is recognized through use of the connecting factors, the presumptive factor(s) may still be rebutted by the party contesting the local jurisdiction.
  - This is done by adducing facts which demonstrate that the connecting factor, in actuality, signifies little or no connective relationship.
  - Unless the forum of necessity doctrine should apply.

Forum Non Conveniens

- *Forum non conveniens = forum not agreeing*
- Distinct from the preliminary issue of jurisdiction
- Allows a court that might otherwise be properly entitled to hear a case, to decline to do so if another forum is more convenient

Forum Non Conveniens

- The party raising the doctrine must establish that an alternative forum is “clearly more appropriate”

- Courts may consider various factors when comparing different forums, including:
  - the locations of the parties and witnesses;
  - the cost of transferring the case to another jurisdiction or of declining the stay;
  - the impact of a transfer on the conduct of the litigation or on related proceedings;
  - the possibility of conflicting judgments;
  - problems related to the enforcement of judgments; and
  - the relative strengths of the connection of the two parties.

Club Resorts Ltd. v. Van Breda

- Determinative in the *Van Breda* case was that the contract between the plaintiff and Club Resorts had been formed in Ontario.

- Club Resorts could not refute the resulting presumption of jurisdiction.

- On the issue of *forum non conveniens,* the defendant was also unable to demonstrate that a Cuban court would clearly be a more appropriate forum.

Significance of *Van Breda*

- Through *Van Breda,* the Supreme Court has modified the previously accepted framework of analysis established in *Muscutt v. Courcelles.*

- The eight factors set out in *Muscutt* have been distilled by *Van Breda* to a single issue:
  - whether there exists a real connection between the matter and the forum.

Cugalj v. Wick

- The central issue dealt with whether a connecting factor arose from the fact that the defendant was represented by an Ontario insurance company.

- Plaintiffs emphasized that insurer was conducting the lawsuit on behalf of the defendant, and that any resulting judgment could be collected directly against the insurance company itself.

Cugalj v. Wick

- Court noted that there is no precedent where the location of a non-party responding insurance company had supported a finding of jurisdiction.

- Doubtful on the facts whether any judgment would even be ordered.

- Most importantly, Justice Hourigan decalred that it would be contrary to the intent of *Van Breda* to recognize a new presumptive factor.

QUESTIONS?

Recent Developments in Liability Insurance Case Law: The Consequence of Policy Language

Michael S. Teitelbaum

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Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada, [2010] 2 S.C.R. 245

Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada, [2010] 2 S.C.R. 245

1) The primary interpretive principle is that when the language of the policy is unambiguous, the court should give effect to clear language, reading the contract as a whole (*Scalera*, at para. 71).

Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada, [2010] 2 S.C.R. 245

2) Where the language of the insurance policy is ambiguous, the courts rely on general rules of contract construction (*Consolidated – Bathrust* at pp. 900-902*).* For example, courts should prefer interpretations that are consistent with the reasonable expectations of the parties (*Gibbens,* at para. 26; *Scalera,* at para. 71; *Consolidated Bathurst,* at p. 901), so long as such an interpretation can be supported by the text of the policy. Courts should avoid interpretations that would give rise to an unrealistic result or that would not have been in the contemplation of the parties at the time the policy was concluded (*Scalera*, at para. 71; Cons*olidated-Bathurst,* at p. 901). Courts should strive to ensure that similar insurance policies are construed consistently (*Gibbens,*at para. 27). These rules of construction are applied to resolve ambiguity. They do not operate to create ambiguity where there is none in the first place.

Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada, [2010] 2 S.C.R. 245

- 3) When these rules of construction fail to resolve the ambiguity, courts will construe the policy *contra proferentem* – against the insurer (*Gibbens,* at para. 25; *Scalera,* at para. 70; *Consolidated Bathurst,* at pp. 899-901). One corollary of the *contra proferentem* rule is that coverage provisions are interpreted broadly, and exclusion clauses narrowly (*Jesuit Fathers,* at para. 28).

Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada, [2010] 2 S.C.R. 245

- 4) Exclusions do not create coverage – they preclude coverage when the claim otherwise falls within the initial grant of coverage. Exclusions, should, however, be read in light of the initial grant of coverage.

Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada, [2010] 2 S.C.R. 245

- 5) A CGL policy may also contain exceptions to the exclusions. Exceptions also do not create coverage – they bring an otherwise excluded claim back within coverage, where the claim fell within the initial grant of coverage in the first place (*Annotated Commercial General Liability Policy,* vol. 1, at p. 1-10). Because of this alternating structure of the CGL policy, it is generally advisable to interpret the policy in the order described above: coverage, exclusions and then exceptions.

In the Beginning there was the word..

And the Word was good. But the Courts looked upon the Word and they did not always like the Word. And so the Courts met and created the Rules, so that the Words could be made better. And so that the Rules themselves would be made better, the Courts gave to them names in Latin, that they would be revered among lawyers and strike fear and awe into the hearts of underwriters.

- And the Rules were these:

1. If a Word has two meanings, that meaning that requires the insurer to pay the most will be the one that the Court adopts.

2. The actual words of the contract may be disregarded if they are inconsistent with the insured's reasonable expectations of coverage.

Topics

1) Who is entitled to give notice under a liability policy;
2) Whether the insured has control of an action in which a subrogated claim is advanced; and
3) Allocation of defence costs and an insurer's exposure to full indemnity costs if it is found to have wrongfully denied its defence duty.

Giving Notice

- *Walker v. Sovereign General Insurance Co.,* [2010] O.J. No. 4106 (Sup. Ct.), aff'd [2011] O.J. No. 4106 (C.A.)

Walker v. Sovereign General Insurance Co.

- "Given its purpose and importance, if the notice is to be given for an insured instead of by the insured itself, the person giving it should have sufficient proximity to the claim to have knowledge of the information required by s. 3(a). Emshih was just such a person. It owned the property where the accident occurred; it was a defendant in the original action; and it cross-claimed against Sovereign's insured. In giving notice to Sovereign, Emshih was giving notice *for* Sun Shelters as contemplated by s. 3(a) of the policy."

Control of Subrogated Action

Zurich Insurance Co. v. Ison T.H. Auto Sales, [2011] O.J. No. 1487 (Sup. Ct.), aff'd [2011] O.J. No. 4729 (C.A.)

Zurich Insurance Co. v. Ison T.H. Auto Sales Inc.

- "Nevertheless, the choice belongs to the underwriters and if their pens are not prepared to write such a clause into the policy, they should not ask the court to do so.

- There is of course, another commonly employed alternative. In the case of large losses such as this, it is prudent and common for the insurers and the insured to discuss subrogation at the time the insurance claim is paid, and to agree on such matters as legal counsel, sharing of costs, and procedures for the resolution of any disagreements. If the insurers have failed to take these simple basic steps, they can hardly complain if their insured insists on its common law rights."

Allocation of Defence Costs

Philadelphia Indemnity Insurance Co. v. Chicago Title Insurance Co., 2012 U.S. Dist. Lexis 66595

Hanis v. Teevan,
[2008] O.J. No. 3909 (C.A.)

Tedford v. TD Meloche Monnex, [2012] O.J. No. 2821 (C.A.)

Tedford v. TD Meloche Monnex

- "I would direct, unless the parties otherwise agree, that the [insurer's] counsel be instructed to defend both the covered and the uncovered claims, in a manner commensurate with the aggregate amount claimed and that the [insured should] bear the costs of the defence to the extent that they exceed the reasonable costs associated with the defence of the covered claims."

Papapetrou v. 105442 Ontario Ltd., [2012] O.J. No. 3373 (C.A.)

Full Indemnity Costs

- *Savage v. Belecque,* [2011] O.J. No. 4586 (Sup. Ct.), aff'd [2012] O.J. No. 2818 (C.A.)

The art of negotiation as demonstrated in “True Grit”:

Questions?

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2012 RIMS Canada Conference!