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NEW DEVELOPMENTS IN JOINT-AND-SEVERAL LIABILITY

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In a recent judgment, *British Columbia (Attorney General) v. Insurance Corporation of British Columbia*, the Supreme Court of Canada explored the relationship between two important concepts in the law of torts — vicarious liability and joint-and several liability — in the context of British Columbia's *Police Act* and *Negligence Act*.

In B.C. the principle of joint-and-several liability is grounded in the *Negligence Act*. It gives injured plaintiffs, when two or more defendants are at fault for damages, the right, regardless of the degree of individual fault, to collect the entire judgment from any one defendant. The Act also provides that defendants should contribute and indemnify each other in the degree to which they are found to be at fault. This scheme ensures that an injured plaintiff can collect from the most solvent or co-operative defendant *and* gives the paying defendant the right to pursue the other liable defendants for their proportionate contributions. Vicarious liability is a separate concept: it applies when, by virtue of statute or common law, a plaintiff is afforded a remedy against a third party (usually an employer or government body) for compensation for the wrongful acts of another.

The case at issue arose out of a traffic accident that occurred in Mission, B.C., when the driver of a stolen vehicle, while being pursued by a Royal Canadian Mounted Police (RCMP) vehicle, struck and killed another driver. The husband and children of the deceased driver brought an action under the *Family Compensation Act* against the driver of the stolen vehicle, the RCMP officer who had engaged in the chase, and other parties brought in by operation of statute. The first statutory party was the Attorney General of British Columbia, who, pursuant to the *Police Act*, is jointly and-severally liable for torts caused by police officers in the performance of their duties (under the *Police Act* individual police officers are immune from suit). The second statutory party was the Insurance Corporation of British Columbia (ICBC); it was joined as a third party because the driver of the stolen car was uninsured at the time of the accident, giving rise to a potential "uninsured motorist" claim by the surviving family of the deceased. At trial, the judge found the uninsured driver of the stolen vehicle liable for 90 per cent of the damage and the RCMP constable for the remainder.

Following the trial, the case changed to a dispute between the Attorney General and ICBC as to who was responsible for paying the plaintiffs' damages and what rights of contribution and indemnity

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they had against each other. The specific question before the Supreme Court of Canada was whether the Attorney General, vicariously liable by virtue of *Police Act*, was liable to the plaintiffs for only 10 per cent of their damages or, as a joint-and-several tortfeasor, for the entire judgment.

In a short and unanimous judgment, the Supreme Court of Canada held that the Attorney General's liability was what would have been imposed on the RCMP constable if he had not been immune from the suit. Consequently, the Attorney General could not argue that he was not a party "at fault" under the *Negligence Act*. On the contrary, he was jointly-and-severally liable with the uninsured motorist and therefore should fully compensate the family.

Although this judgment interprets a specific statute, the *Police Act*, it will be considered in any future case involving the joint-and several responsibility of vicariously liable parties and will close off most potential arguments aimed at avoiding the application of the *Negligence Act*. As vicariously liable parties are usually the ones with deep pockets, it is clear that many will be faced with paying large judgments in cases involving impecunious co-defendants.

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