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## SUPREME COURT RULES ON INTER-PROVINCIAL TRAFFIC ACCIDENTS: ONLY THE LAW OF THE PLACE OF THE ACCIDENT APPLIES

The Supreme Court of Canada - overruling its own fifty-year old rule in *McLean v. Pettigrew*, [1945] S.C.R. 62 - has rewritten our private international law in torts. The new conflicts of law rule is clear and simple: **the law of the province where the tort occurred will apply in all cases, regardless of the residence of the parties or where the action was instituted: the *lex loci delicti*.**

This decision of December 15, 1994 flows from two appeals heard simultaneously earlier this year. Counsel for the appellant in the Ontario case of *Lucas v. Gagnon* were Allan Lutfy, Q.C. and Odette Jobin-Laberge of our firm. Mr. Lutfy practices before the courts of Ontario and Quebec from our Ottawa office. The other appeal was from British Columbia in *Tolofson v. Jensen*.

The facts in both cases were similar. In each action, the plaintiffs were passengers in automobiles involved in accidents which occurred in the province where the driver of the other vehicle resided. In each action, the plaintiffs sued in their own province to benefit from laws that were more favourable to them. In *Gagnon*, the Ontario plaintiffs wanted to avoid Quebec's no-fault system. In *Tolofson*, the B.C. plaintiffs were attempting to escape Saskatchewan's shorter limitation period.

The seven judges were unanimous concerning the disposition of both appeals and the formulation of the new general rule of *lex loci delicti*. Justice Laforest, in writing the main reasons for judgment, concluded that no exception to the general rule would be recognized concerning torts occurring within Canada. Justices Major and Sopinka, in concurring reasons, would have preferred not to foreclose the possibility of allowing an exception to the general rule for both Canadian and international litigation. The highlights of the decision are:

- the rule in *McLean* - the tort must be actionable in the forum and "unjustifiable" where it occurred - has lost its relevance in the modern world of frequent movement of persons and property across state lines and a uniform rule based on the law of the place of the tort was required;

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- the new rule will be certain, easy of application and predictable for litigants;
- the new rule will apply to all torts, not only to traffic accidents;
- parties should expect that their activities will be governed by the law of the place where they occur and that the legal consequences flowing from these activities - the rights and obligations of the parties - should be defined by the same laws;
- our federal system, with different provinces exercising territorial legislative jurisdiction, did not lend itself to exceptions to the general rule, not even on the grounds of "public policy" where the laws of the provinces differ;
- an exception to the general rule of *lex loci delicti* can be envisaged only in international litigation in the rare instance where its rigidity could give rise to injustice;
- two Justices would have allowed the same exception to the general rule in inter-provincial litigation that the majority was prepared to recognize in international disputes;
- the issue of jurisdiction as between the Courts of two competent provinces would be resolved by the traditional balancing test to determine the more convenient forum but, in any event, the applicable substantive law would be that of the place where the tort occurred.

In *Gagnon*, the Court was also unanimous in acknowledging the sole application of Quebec's no-fault system and the agreement entered into by the governments of Quebec and Ontario to resolve the rights of all persons involved in Quebec traffic accidents, regardless of their residence. As a result of this decision, the reasons for judgment of the Ontario Court of Appeal in *Lewis v. Leigh*, (1986) 54 O.R. (2d) 324, *Grimes v. Cloutier*, (1989) 69 O.R. (2d) 641, and *Préfontaine v. Frizzle*, (1990) 71 O.R. (2d) 385, are no longer applicable.

This is a landmark decision in the private international law of tort. Its application in cases of libel and products liability may differ somewhat from the simpler situation in traffic accidents. Justice Laforest has suggested that where an act occurs in one place but its consequences are directly felt elsewhere, the place where the consequences occurred may well dictate which law would govern.

This new rule has been created by judges. A provincial legislature could, within its legislative competence, adopt different choice of law rules by statute. Justice Laforest noted that the new Québec Civil Code includes a provision which allows for an exception to the general rule where the tortfeasor and the victims have the same domicile or residence.

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