

2007

Canada Update - Highlights of Major Legal News and Significant Court Cases from February 2007 to April 2007

Brandon Wonnacott

Recommended Citation

Brandon Wonnacott, *Canada Update - Highlights of Major Legal News and Significant Court Cases from February 2007 to April 2007*, 13 LAW & BUS. REV. AM. 1027 (2007)
<https://scholar.smu.edu/lbra/vol13/iss4/17>

This Update is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

CANADA UPDATE—HIGHLIGHTS OF MAJOR LEGAL NEWS AND SIGNIFICANT COURT CASES FROM FEBRUARY 2007 TO APRIL 2007

*Brandon Wonnacott**

I. SUMMARY OF LEGAL NEWS

A. U.S. FEES ON CANADIAN GOODS DELAYED

THE U.S. government has delayed, for the second straight time, the collecting of fees for Canadian goods that was scheduled to come into effect March 1, 2007.¹ The fees were introduced last summer as an attempt to fund inspections for pests, disease, and bioterrorism in food and other goods coming in from Canada.² The U.S. government originally scheduled the fees to come into effect on November 24, 2006, but pushed it back to March 1, 2007 and now even further back into June 2007.³ Even with the new delay in collection, many are still upset about the fees. New York legislator Louise Slaughter called it a “broad, heavy handed response” to a problem that could be solved without the strain on commerce between the two countries.⁴ Several Canadian and American firms have complained about the fees, claiming it will “clog crossings, cause delays, and raise business costs.”⁵ Aircrafts currently pay \$70.25 and ships with commercial goods pay \$488.⁶

B. \$3.4 BILLION MILITARY CARGO PLAN DEAL

The Canadian government agreed to a contract with Boeing to purchase four heavy-lift military cargo planes that will cost the country \$3.4 billion.⁷ Defense Minister Gordon O'Connor proclaimed that with

* J.D. Candidate, May 2008, SMU Dedman School of Law.

1. Beth Gorham, *U.S. Delay Fees on Canadian Goods Again to Look at Other Options*, CANOE MONEY, Feb. 22, 2007, available at <http://money.canoe.ca/News/Economy/2007/02/22/pf-3655519.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. CBC News, *Defence Minister hails \$3.4B cargo plane deal as 'new era' for military*, CBC NEWS, Feb. 2, 2007, available at <http://www.cbc.ca/canada/montreal/story/2007/02/02/military-planes.html>.

the planes mission flexibility the deal “marks a beginning of a new era for Canada’s Armed Forces.”⁸ The deal was delayed for almost two months due to argument involving spin off subcontracts and which provinces would benefit the most.⁹ Quebec lobbied the hardest to obtain a majority of the industrial benefits, but is anticipated to only receive approximately thirty percent of the spin offs.¹⁰ There was significant conflict in the deal; however, as the Liberals believed that Canada should instead continue to borrow or lease its transport planes from its allies.¹¹ The Conservatives believe the aircraft will allow the military to now transport its own large equipment around the world.¹² The first of the planes will be delivered by the end of August.¹³

II. SIGNIFICANT COURT DECISIONS

A. ENFORCEMENT OF ORDERS IN FAMILY LAW

1. *Dickie v. Dickie*

On February 9, 2007, the Supreme Court of Canada allowed the appeal of Dr. Kenneth Earle Dickie.¹⁴ Dr. Dickie was appealing a finding of contempt for “failing to comply with court orders requiring him to secure his support obligations by providing an irrevocable letter of credit and to post security for costs.”¹⁵ Dr. Dickie served forty-five days in jail for that contempt before filing his appeal.¹⁶ He appealed the finding of contempt, claiming that the ‘motions judge had no jurisdiction under rule 60.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to make a contempt order because the underlying orders were orders requiring him to make a “payment of money.”¹⁷ He also appealed claiming he was denied procedural fairness.¹⁸

Mrs. Dickie, as a preliminary matter, asked the court of appeals to decline to hear Dr. Dickie’s appeal.¹⁹ The court of appeals allowed Dr. Dickie’s appeal to be heard and set aside the court’s finding of contempt under rule 60.11 of the *Rules of Civil Procedure*.²⁰ In a dissenting opinion, Laskin J.A. wrote that the court “had discretion to refuse to entertain Dr. Dickie’s appeal and that, based on the record showing continued disobedience with court orders, it should have exercised that discre-

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Dickie v. Dickie*, 2007 S.C.C. 8, 279 D.L.R. (4th) 625, available at <http://scc.lexum.umontreal.ca/en/2007/2007scc8/2007scc8.html>.

15. *Id.* ¶ 1.

16. *Id.*

17. *Id.* citing to Rules of Civil Procedure, Motion for Contempt Order, R.R.O. 1990, Reg. 194, § 60.11(1) (Can.).

18. *Id.*

19. *Id.* ¶ 2.

20. *Id.*

tion.”²¹ Laskin went on to say that even if the court was correct in allowing the appeal, it still should be dismissed under rule 60.11 because ‘neither order for security amounts to an order for the “payment of money.”’²²

The Supreme Court, while allowing the court of appeals discretion on whether or not to entertain the appeal, agreed with Laskin’s dissent as the meaning of rule 60.11 is not covered in this case. The court went on to rule that “the appeal is allowed, the order of the Court of Appeal is set aside, Dr. Dickie’s appeal from the contempt order is dismissed, and the motion judge’s order reinstated.”²³

B. DUTY OF CARE, FORESEEABILITY, AND CAUSATION IN TORTS

1. *Resurface Corp. v. Hanke*

On February 8, 2007, the Supreme Court of Canada ruled on the case of *Resurface Corporation v. Hanke*.²⁴ Mr. Hanke was burned by an ice-resurfacing machine when hot water overflowed the gas tank and released vaporized gas which, after being ignited by a heater, caused a fire and explosion.²⁵ Mr. Hanke sued for negligence damages, alleging that the gasoline and water tanks were too closely located and had a very similar appearance.²⁶ At the trial level, the judge dismissed the action, finding that Hanke did not establish the accident was caused by the negligence of either the manufacturer or the distributor.²⁷ The court of appeals overturned the judge’s ruling and ordered a new trial, stating that the trial judge was mistaken in his analyses of foreseeability and causation.²⁸

The Supreme Court overruled the appeals court and restored the trial judgment.²⁹ In regards to foreseeability, the Court found that there was no error of law or fact in the trial judge’s approach or conclusions.³⁰ There was evidence supporting the trial judges finding, namely that “Mr. Hanke was not confused, notably his own admission.”³¹ The Court ruled that the trial judge’s ruling of “no confusion therefore cannot be displaced.”³²

The Supreme Court went on to look at the causation issue and found that the court of appeals was mistaken in requiring the judge to apply a “material contribution” test, when the basic test remains a “but for”

21. *Id.* ¶ 4.

22. *Id.*

23. *Id.* ¶ 7.

24. *Resurface Corp. v. Hanke*, 2007 S.C.C. 7, 278 D.L.R. (4th) 643, available at <http://scc.lexum.umontreal.ca/en/2007/2007scc7/2007scc7.html>.

25. *Id.* ¶ 1.

26. *Id.* ¶ 2.

27. *Id.* ¶ 3.

28. *Id.* ¶ 4.

29. *Id.* ¶ 30.

30. *Id.* ¶ 7.

31. *Id.* ¶ 10.

32. *Id.*

test.³³ The Court clarified and stated that the material contribution test should only be used in situations where circumstances make it impossible for the plaintiff to prove negligence using a but-for test, but the injury still is within the risk created by the defendants' breach of care.³⁴ As this case was not an exception, the Court held the but-for test was appropriate and the trial court's judgment should be enforced.³⁵

C. INVALIDITY OF SECURITY CERTIFICATES

1. *Charkaoui v. Canada*

The Supreme Court of Canada recently reviewed the Immigration and Refugee Protection Act (IRPA), which allows the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration to issue a certificate disallowing presence in Canada on the grounds of national security, where the person may then be detained.³⁶ If a permanent resident is detained, a review must take place within forty eight hours; if a foreign national is detained, it is automatic and they can not apply for review until 120 days have passed from the day a judge determined the certificate to be reasonable.³⁷ "The judge's determination on the reasonableness of the certificate cannot be appealed or judicially reviewed."³⁸

The three appellants in this case were all living in Canada at the time they were arrested on the basis of involvement with terrorist groups.³⁹ "Both the Federal Court and the Federal Court of Appeal upheld the constitutional validity of the IRPA's certificate scheme."⁴⁰ The Supreme Court of Canada held that the appeals are allowed.⁴¹

33. *Id.* ¶ 15.

34. *Id.* ¶ 19.

35. *Id.* ¶ 30.

36. *Charkaoui v. Canada*, 2007 S.C.C. 9, 276 D.L.R. (4th 594, available at <http://scc.lexum.umontreal.ca/en/2007/2007scc9/2007scc9.html>).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* ¶ 143.

Documentation

