

INSURANCE LAW BULLETIN

October 16, 2013

By Maura Thompson & Evan Bawks

The Importance of an HTA Conviction in a Civil Action

[The information below is provided as a service by Shillingtons LLP and is not intended to be legal advice. Those seeking additional information on the issues above or any other matter should contact a member of the firm at (519) 645-7330.]

Bhattacharjee v Marianayagam, 2013 ONSC 40

This case highlights the effect of a *Highway Traffic Act* conviction against a driver in a subsequent civil case. In this case, the defendants, Grossi and Nissan Canada Inc., were successful in having the action dismissed against them by establishing that the entire fault for the accident lay with the main defendant driver, Marianayagam. Marianayagam's *Highway Traffic Act* conviction was used as evidence in the civil case.

The plaintiff, Bhattacharjee, was a passenger in Marianayagam's vehicle, which struck the vehicle driven by Grossi while travelling through an intersection in Hamilton. The evidence indicated that Marianayagam had entered the intersection on a red light. She was charged with careless driving under the *Highway Traffic Act* and pled guilty to the lesser offense of disobey traffic signal – red. While she alleged that the lawyer she retained prevented her from contesting the charge, she did not appeal the conviction or assert her claim of incompetent counsel.

Justice O'Connor found that Grossi's evidence with respect to the accident and Marianayagam's guilty conviction was dispositive of the issue of liability. Following the principle which holds that courts should not be inconsistent in subsequent proceedings from the first adjudication on the same issue, the judge dismissed Marianayagam's argument with respect to her charge and conviction. While there are established grounds (fairness, fraud or dishonesty, new evidence) in which an issue can be relitigated, none of the principles applied to this case. Justice O'Connor held that when these grounds do not apply, a criminal or quasi-criminal conviction is generally conclusive of the relevant factual elements in a related civil action. A guilty plea is an admission of all the facts and legal elements of the charge. Further, contributory negligence or attempting to show that the other defendants were partially responsible was not permitted in this case. Justice O'Connor found that there was a full appreciation of the evidence from the relevant witnesses, all of which demonstrated there was no real chance of success against Grossi and Nissan Canada.

Discussion

This case highlights the effect of a conviction under the *Highway Traffic Act* on a subsequent civil matter. As the standard of proof to establish guilt in criminal and quasi-criminal proceedings is “beyond a reasonable doubt,” findings or pleadings of guilt are highly persuasive with respect to the issue in civil matters, which has the lesser standard of proof to establish fault “on a balance of probabilities.” Such evidence is useful in motions for summary judgment, as it establishes that many of the facts alleged against the defendant were already admitted to or found against him or her through the conviction. However, further evidence provided by the other parties and witnesses can still be relied upon and sought in addition to the charge and conviction. In *Bhatterjee*, the persuasive evidence of the moving parties contrasted strongly with the contradictory evidence of Marianayagam. This aided the court in finding that it had a full appreciation of the all the evidence, a key element of granting a motion for summary judgment.