

Non-Contractual Damages in Wrongful Dismissal Actions

Brian A. GROSMAN and John R. MARTIN*¹

| | |
|---|----|
| INTRODUCTION | 2 |
| I. DAMAGES FOR NEGLIGENT MISREPRESENTATION | 3 |
| II. DAMAGES FOR INTIMIDATION | 7 |
| III. PRE-EMPLOYMENT CONTRACTS | 11 |
| SUMMARY | 17 |

¹. Grosman, Grosman & Gale, Toronto, Ontario.

In the vast majority of wrongful dismissal actions, the only potentially viable remedy available to the plaintiff is damages for breach of contract.

This very basic proposition was true even in light of the decision in *Pilon v. Peugeot*¹ and prior to the landmark decision of the Supreme Court of Canada in *Vorvis v. Insurance Corporation of British Columbia*.² The *Vorvis* decision only served to reinforce the general applicability of contract law and compensatory damages.

It has not always been a simple exercise to determine damages for breach of contract in wrongful dismissal actions. There are significant areas of contention in relation to:

- an individual's entitlement to bonus, both at the time of termination and during the notice period, as well as the quantum of that bonus;
- formula-based or discretionary bonus entitlement during the period of reasonable notice;
- damages for loss of fringe benefits, including car allowance;
- reimbursement for expenses incurred in attempting to mitigate one's damages; and
- the potential reduction in one's damages for a failure to act reasonably in seeking comparable alternative employment.

A trilogy of recent decisions by the Ontario Court of Appeal deal with non-contractual damages in wrongful dismissal actions. These important decisions raise significant issues relating to the availability of certain claims for non-contractual damages in wrongful dismissal actions.

I. DAMAGES FOR NEGLIGENT MISREPRESENTATION

The first Canadian case applying the *Hedley Byrne*³ principle to a contract of employment was the Nova Scotia case of *Wooldridge v. Nickerson & Sons Ltd. and Canso Seafoods Ltd.*⁴

Wooldridge, a British seaman with a British Skipper's Certificate, was induced by the Canadian company to accept a job in Nova Scotia. Wooldridge was advised that he would have to pass a Canadian seaman's examination but was assured that the process was a mere formality. Subsequent to the offer of employment being made, significant changes were put into effect with regard to qualifications for foreign seamen. As a result of these changes Wooldridge would have been required to serve at least eighteen months before becoming a qualified master or captain. Nickerson became aware of these examination requirements but never advised Wooldridge of the changes. The Nova Scotia Court of Appeal ruled that given these facts Wooldridge had relied on the expertise of Nickerson and that there existed a duty upon the company to advise Wooldridge of the new seaman qualification requirements. Failure to inform Wooldridge of the changes was an omission that amounted to a negligent misrepresentation.

The *Wooldridge* case was referred to and adopted in *Queen v. Cognos Inc.*⁵ the leading decision in Ontario relating to the application of the *Hedley Byrne* principle to a contract of employment.

Douglas Queen, the plaintiff, was awarded damages of \$50,000 for loss of income, \$11,972 for damages resulting from the purchase and sale of his new home, \$252 for job search expenses and \$5,000 in damages for mental distress because he had left a secure job in Calgary and moved to Ottawa as a result of negligent misrepresentations made by company representatives relating to his new job.

At trial, Mr. Justice White, found that in hiring Mr. Queen, Cognos Inc. had negligently misrepresented a number of facts, including:

- (i) that the company was financially committed to a project which would employ Mr. Queen for at least two years;
- (ii) Mr. Queen would be an "integral player" in that project;
- (iii) the staff involved in the project would double; and
- (iv) the company was committed to developing even further projects.

These representations were made when the company's representatives knew that the funding for this project "was by no means a foregone conclusion". It realized that Mr. Queen was relying upon those representations and would be leaving a secure, well paying job if he accepted the position. Approximately six months after he was hired, the project was wound up. Queen was transferred to other positions for a further nine months and was ultimately terminated with three months' severance, pursuant to the provisions of his employment contract. The decision of the trial judge was overturned on appeal.⁶

Speaking for the majority of the Ontario Court of Appeal, Mr. Justice Finlayson found that the provision in Queen's contract that allowed the company to terminate his employment upon three months' notice was an express disclaimer which served to eliminate any misrepresentations concerning the security of the position:

On the issue of disclaimer of responsibility, the trial Judge appears to have interpreted it in the narrow sense that Cognos should have made an express disavowal of any representations that might have been made by Johnston in the negotiations leading up to the execution of the contract of employment. I do not think that is correct. In my opinion, it is a sufficient disclaimer if the contract contains terms which contradict, or are inconsistent with the representations relied upon. In the case on appeal, the respondent Queen stated that he would not have given up his secure position in Calgary for a move to Ottawa that was without permanence, and yet he signed a contract which provided him with no assurances respecting his place of employment or its tenure. To rely on Hedley Byrne, the negligent misrepresentation must have amounted to a warranty of job security, and yet the contract

of employment was surely a disclaimer of just that. No representations as to job security, whether based on performance, or on job availability, could have survived the 1 month termination notice 'without cause' contained in the contract.⁷

In addition, the Court of Appeal stated that the trial judge placed too high a duty upon the company's representative during the interviewing process:

However, even apart from the disclaimer argument, I am further of the view that the trial Judge erred in law in his finding of negligent misrepresentation. The error was in imposing a higher duty of care upon Cognos and its representative than is called for in the Hedley Byrne situation. The duty of care is of the standard of Donoghue (M'Alister) v. Stevenson, [1932] A.C. 562, [1932] All E.R. Rep 1 (H.L.), as developed in later cases including Caparo v. Dicjman, supra. A determination as to whether that duty of care has been discharged involves looking at the facts of each case. In the circumstances of this appeal, it is no more than a duty to take care that the representations made were responsible and accurate to the knowledge of Johnston and of his principal, Cognos.

The statements made by Johnston were not limited to the respondent Queen. They were the same representations made to all candidates on the short list, and they were intended to be descriptive of the nature and extent of the job opportunity being offered. They had to be accurate and, above all, they could not be misleading, but the object of the interviews was to make the position sound attractive enough that the successful candidate would accept it.

Cognos at all times adopted what Johnston had said, and, indeed, it was its failure to disassociate itself from his representations that led the trial Judge to find negligence on the part of Cognos. He said [O.R. p. 418; C.C.E.L. p. 179]:

"To put Mr. Johnston in a position where he would communicate to aspirants of the job his belief as to the future development of 'Multiview', which belief senior management was well aware of, was in itself negligence in the circumstances unless senior management took pains to bring home to Mr. Queen a disclaimer of responsibility for Mr. Johnston's anticipated representations. Senior management made not the slightest effort to make such a disclaimer."

As to Johnston, the trial Judge specifically held that he was a truthful witness and that he accepted his evidence without reservation. He stated that: "[a]ny divergence between Mr. Johnston's evidence and Mr. Queen's, as to what Mr. Johnston said in the hiring interview, evidence [sic] is not material" [at O.R. p. 421; C.C.E.L. p. 182]. The trial Judge criticized not what he said, but what he did not say. He held [at O.R. 416; C.C.E.L. at 177]:

While Sean Johnston truthfully spoke to the plaintiff in the interview, in the sense that he was not deliberately deceiving the plaintiff, and was speaking on the assumption that his hopes would prove to be true, in another sense he was not truthfully speaking to the plaintiff. He did not disclose to the plaintiff that there had been no budgetary commitment by senior management to make his plans a probable reality. He did not disclose to the plaintiff that senior management had not yet ruled upon the feasibility of those plans.

Johnston was hired to oversee the Multiview project. Counsel for Queen conceded that Johnston was as surprised as anyone at the corporate decision not to concentrate on it. Johnston believed in what he said to the job applicants about Multiview. The trial Judge found that he had a duty to go further, and to point out the details of the internal decision-making process at Cognos and stress that that process had not been completed. In other words, his own bona fide belief as a knowledgeable executive that the program was going forward was not sufficient. He had to divulge to all of the applicants that he interviewed the precise status of the corporate commitment to the development of the new product so that they could make their own assessment of the viability of the project.

In my opinion, this casts the duty too high. It suggests that at least a quasi-fiduciary relationship existed between corporation and job applicant, giving rise to a duty to make full disclosure. Such a duty can exist in a given "special relationship" required by Hedley Byrne, [see for example Courtright v. Canadian Pacific Ltd. (1983), 45 O.R. (2d) 52, 4 C.C.E.L. 152, 26 B.C.L.R. 17, 5 D.L.R. (4th) 488 (H.C.), aff'd (1985), 50 O.R. (2d) 560, 18 D.L.R. (4th) 639 (C.A.)] but it does not exist in this one. The trial Judge was in error in extending to this situation the narrow class of contract cases where uberrima fides is the standard.⁸

Even though the Ontario Court of Appeal reversed the decision of the trial judge in *Queen v. Cognos Inc.*, the Court did find that there was a duty of care imposed upon a hiring company when dealing with job applicants, thereby leaving the door open for future claims of negligent representation. In addition, the Supreme Court of Canada recently granted leave to appeal the *Queen v. Cognos Inc.* decision, thereby insuring that the nation's highest court has the final say in this important case.

II. DAMAGES FOR INTIMIDATION

The Supreme Court of Canada has defined the tort of intimidation as follows:

*A commits a tort if he delivers a threat to B that he will commit an act or use means unlawful as against B, as a result of which B does or refrains from doing some act which he is entitled to do, thereby causing damage either to himself or to C. The tort is one of intention and the plaintiff, whether it be B or C, must be a person whom A intended to injure.*⁹

The 1988 decision of the Supreme Court of Ontario in *Roehl v. Houlahan*¹⁰ is the first, and perhaps only, Canadian decision to award damages for intimidation within the context of a wrongful dismissal action. However, on appeal, the decision of the trial judge was reversed for reasons unrelated to the legal viability of the claim.

In the *Roehl* case, Mr. Roehl was hired by Nortec Air Conditioning Industries Ltd. in November 1982 as the company's General Manager. He replaced Mr. Houlahan, who had been acting General Manager for approximately one month and who, after Mr. Roehl's appointment as General Manager, was made Vice President, Finance and Administration, reporting to Mr. Roehl.

Within one month of Mr. Roehl joining Nortec, Mr. Houlahan told him that the employees thought that he was "planted" in the position of General Manager by the new owners and that the employees were concerned that the company would become a branch plant operation. Mr. Houlahan later complained that he did not like the way that Mr. Roehl was running the company and that he would not tolerate it any longer. In April of 1983, Mr. Roehl's employment with Nortec was terminated, after significant changes had already been made to his duties and responsibilities as General Manager.

At trial, Mr. Justice O'Driscoll concluded, on the basis of evidence presented to the court, that:

- (a) Mr. Houlahan had instigated a rebellion amongst the employees, against Mr. Roehl, in January 1983;
- (b) Mr. Houlahan approached the Board of Directors, telling them that he and others would quit unless Mr. Roehl was removed as General Manager;
- (c) Mr. Houlahan had "deliberately set up" Mr. Roehl by allowing him to utilize incorrect organizational charts within the company, that would result in Mr. Roehl being reprimanded by the President and other Board members.

His Lordship concluded that Mr. Roehl had succeeded in establishing the tort of intimidation, thereby dismissing the submissions of Mr. Houlahan to the contrary:

It was argued by counsel for the defendants that there was no evidence that Houlahan had sought to harm the plaintiff; it was submitted that the evidence went only so far as to show that Houlahan was attempting to better himself. In my view, Houlahan's intimidation of the Board of Directors and bringing about the plaintiff's discharge so that he, Houlahan, could get the plaintiff's job is patent evidence of Houlahan's intent to harm the plaintiff.¹¹

Roehl was awarded \$40,000 damages for the tort of intimidation against Houlahan personally. This award was made notwithstanding the fact that Roehl had been provided with severance from Nortec, equivalent to six months' compensation.

On appeal, the decision of the trial judge was reversed on the basis that Houlahan's threat to resign his employment in the event that Roehl's employment with the company was continued, was not a threat to commit an "illegal act".

Madam Justice McKinlay, speaking for the majority of the Ontario Court of Appeal, stated, in part:

It is the position of the appellant that the only threat made by Houlahan was the threat to resign his position with Nortec if the respondent's employment was continued and that Houlahan was fully within his legal rights to resign for any reason, assuming he gave reasonable notice of his intention to do so. There was, of course, no indication that he would resign other than in a lawful fashion.

My understanding of the position of the respondent is, first, that Houlahan not only threatened to resign himself but threatened to take the middle management of the company with him; and, second, that his threat cannot be looked at in isolation but must be examined in the light of all of the other facts of the case, and that the facts as found by the trial Judge indicate that Houlahan acted unlawfully, at least against the company to which he owed a fiduciary duty of loyalty and co-operation with management.

With respect to the first proposition, there is no evidence that Houlahan threatened to resign and take middle management employees with him. The evidence indicates that Houlahan himself threatened to resign and that he warned the Board of Directors that a number of middle management employees would probably do the same thing, and that it would be advisable for the Board of Directors to speak to these individuals, which the Board did. The Board was well able to determine from those individuals what their complaints and intentions were.

With respect to the respondent's second proposition, I am not persuaded that the total circumstances preceding and surrounding the threat made by Houlahan to the Board of Directors should be taken into consideration in determining whether intimidation occurred in this case unless those surrounding circumstances themselves could be said to constitute a threat to commit an unlawful Act. No one would state that Mr. Houlahan's treatment of the respondent as found by the trial Judge was other than reprehensible, but reprehensible conduct alone is not actionable. The respondent was placed in a situation where his hiring was resented, he was unwelcome by the middle management of Nortec who had run their own show for a number of years, and he was considered to be a 'plant' of the Swiss owners. He was not put in that position by Mr. Houlahan.

On the facts of this case, I can see no threat to commit an illegal act.¹²

In a strong dissenting judgment, Mr. Justice Brooke stated, in part:

It is conceded that the defendant intended to injure the plaintiff. I think the trial Judge understood that the case was not made out simply by a threat to resign, which would be a threat to do something that the defendant could lawfully do. Having regard to the findings of the trial Judge and the view that he took of the evidence, I think he regarded the threat by the defendant as a threat to take out the middle management and to damage the company if

they did not give him his way. Having regard to the duty of the defendant to the company, in the circumstances, I think that the elements of the cause of action as laid down in Central Canada Potash Co. v. A.G. Saskatchewan, supra were made out.

I do not agree that the evidence does not support this conclusion. Indeed, to the contrary. There was evidence which supports the finding by the trial Judge that the defendant intended to embarrass and disparage the plaintiff in the eyes of his fellow employees and his employer. There was evidence that the defendant deliberately refused to support the plaintiff in his attempts to carry out the duties of his office. There was evidence that the defendant fomented and led the rebellion to have the plaintiff discharged, and the conclusion that the defendant orchestrated what happened. What was orchestrated was the defendant's and a group of middle management personnel's threats to leave if the plaintiff was not replaced. The defendant's threat, then, was that he would in this manner cause damage to the company if he did not get his way. In describing why the plaintiff's contract was terminated, the trial Judge said in part:

"because they thought that, for the greater honour and glory of Condair/Nortec, the plaintiff would just go away and save them the acute embarrassment of having to admit, publicly, that the Board of Directors of Nortec was stonewalled and held to ransom by Houlahan and a group of middle managers; not only was the Board of Directors stonewalled, but it was forced to appease Houlahan and his group by agreeing to fire the plaintiff and immediately appointing Houlahan, the person who had engineered the entire plot."

And he also said with respect to the same issue, "Why, because of the actions of Houlahan and his group, the Swiss decided to sacrifice Max Roehl to thwart a threatened mass exodus of the middle managers at Nortec."

With respect to my colleagues, it is of no moment that after the plaintiff was separated and the defendant appointed to succeed him that the company prospered. There was no finding that the plaintiff was other than competent. The trial Judge did say that his assessment of the plaintiff was that he was an honest, decent, hard-working gentleman. There is no reason to conclude that had the defendant carried out his duties and given the plaintiff the support required of him as a manager of the company that the company would not have similarly prospered.

In the result then, I am not persuaded that the judgment was wrong, and I would dismiss the appeal with costs.¹³

It is clear that the majority of the Ontario Court of Appeal reversed Mr. Justice O'Driscoll on the basis of a misapprehension on absence of evidence in relation to certain key findings. It appears that there was no palpable or overriding error made by the trial judge to warrant judicial intervention on appeal. There was clearly some evidence to support the trial judge's findings as well as judicial recognition of the tort of intimidation. Mr. Justice Brooke, in his dissenting judgment, presents a persuasive case.

Leave to appeal the judgment of the Ontario Court of Appeal in *Roehl* was recently denied by the Supreme Court of Canada.¹⁴

III. PRE-EMPLOYMENT CONTRACTS

In certain circumstances, the statements and representations of an employer in the pre-hiring stage can form the basis of an independent contract, which is distinct from the contract of employment that is subsequently entered into between the parties.

The leading Ontario case involving such pre-employment contracts is the recent decision of the Ontario Court of Appeal in *Roberts v. Dresser Industries Can. Ltd.*¹⁵

In the *Roberts* case, six individuals were recruited by Dresser Industries in the United Kingdom. They were given assurances by the company that, if they moved to Ontario to accept employment, they would be employed for at least two years. After a 45 day probationary period, these six individuals received a copy of the collective agreement in force between Dresser Industries and the local union of the United Steelworkers of America. Several months later they were laid off, in accordance with the seniority provisions of the collective agreement.

The six employees subsequently instituted proceedings against the company for damages for breach of contract and negligent misrepresentation.

The trial judge ruled in favour of the six employees on the basis of breach of pre-employment contracts, the terms of which were not superseded by the collective agreement. He awarded damages based on the difference between the wages that each employee would have earned over the two year period from the commencement of his employment less the monies actually earned by them during that period, and reimbursement for particular expenses incurred by each of them.

The Ontario Court of Appeal rejected the argument of Dresser Industries that the collective agreement between the union and the company exhaustively prescribed the rights and remedies of the parties. The court upheld the finding of the trial judge that there were pre-employment contracts, entirely separate from the provisions of the collective agreement, which were breached by the company, thereby entitling the six employees to damages for breach of contract, based on the following findings of fact:

- i) during the interviews in England, Dresser's representatives made representations to the respondents of security of employment for a reasonable period of time, not less than 2 years;
- ii) the respondents relied upon such representations in deciding to accept the jobs offered to them and to emigrate to Canada;
- iii) none of the respondents was advised by Dresser's representatives that there was a collective agreement in existence between Dresser and the union that set out certain terms of employment and was binding upon all members of the union;
- iv) no copy of the collective agreement was made available to any of the respondents until they had completed their probationary period; and

- v) the representations regarding security of employment for at least 2 years were intended by the parties, and constituted, a term of the contract between them.

And the Court reached the following conclusions:

- vi) that individual contracts of employment cannot co-exist with a collective agreement where the individual contracts address, expressly or by clear implication, the same matters dealt with in the collective agreement;
- vii) that a claim for damages arising out of rights created by a collective agreement must be pursued in accordance with the remedy contemplated in the collective agreement rather than by Court action;
- viii) that recourse may be had to Court action in the present case, where the respondents became subject to the terms of the collective agreement well after the formation of the individual contracts between them and Dresser; and
- ix) that Dresser had in each instance breached those contracts by terminating the employment of the respondents prior to 2 years from the date of commencement of their employment.

In dismissing the arguments of the appellants that the plaintiffs were precluded from suing for wrongful dismissal on the basis that they were unionized employees, Mr. Justice Catzman relied on the decision of the British Columbia Court of Appeal in *Wainwright v. Vancouver Shipyard Co.*:¹⁶

On the appeals, counsel for Dresser argued that, as a matter of law, individual employees in the position of the respondents could not bring Court action to assert rights under individual contracts of employment once they became subject to the provisions of a collective agreement. In his submission, this proposition was established in three cases in Supreme

Court of Canada: Cdn. Pacific Railway Co. v. Zambri, [1962] S.C.R. 609, 34 D.L.R. (2d) 654; McGavin Toastmaster Ltd. v. Ainscough, [1976] 1 S.C.R. 718, [1975] 5 W.W.R. 444, 4 N.R. 618, 75 C.L.L.C. 14,277, 54 D.L.R. (3d) 1; and St. Anne Nackawic Pulp & Paper Co. v. C.P.U., Loc. 219, [1986] 1 S.C.R. 704, 86 C.L.L.C. 14,037, 28 D.L.R. (4th) 1, 68 N.R. 112, 73 N.B.R. (2d) 236, 184 A.P.R. 236.

[...]

The McGavin and St. Anne Nackawic cases were considered in a decision of the British Columbia Court of Appeal in Wainwright v. Vancouver Shipyards Co. (1987), 14 B.C.L.R. (2d) 247, 38 D.L.R. (4th) 760. Leave to appeal to S.C.C. refused (1987), 86 N.R. 237 (note). That decision, which was reported after the present case was argued at trial, dealt with a remarkably similar fact situation. In Wainwright, the defendant had a contract to build an ice-breaker and required skilled employees for that purpose. It advertised for prospective employees in New Brunswick. At their interviews, the plaintiffs expressed reservations about travelling from New Brunswick to Vancouver, and were assured of "several years" (found by the trial Judge to be not less than 3 years) full employment without lay-off if they made the move. They did but, after a year and a half, were laid off due to a work shortage. The plaintiffs were required to become members of a union which had a closed shop agreement with the defendant and, pursuant to the collective agreement, were the first to be laid off. Their action for damages succeeded at trial, and the employer appealed.

On the appeal, the employer contended that the employees' contracts of employment were governed by the terms of the collective agreement and that the Court had no jurisdiction to entertain a claim for damages for breach of such contracts. In support, its counsel relied, among other cases, upon McGavin and St. Anne Nackawic. The employees contended that the discussions which brought them from New Brunswick to Vancouver resulted in "pre-employment contracts" for breach of which they could properly bring action.

The appeal, was dismissed. Hinkson J.A., who delivered the judgment of the Court, referred to McGavin and St. Anne Nackawic and concluded as follows (at pp., 762-763, D.L.R.; at p. 250, B.C.L.R.):

In the McGavin case, Chief Justice Laskin said at p. 6 D.L.R., p. 725 S.C.R., in dealing with the question of the relationship between parties who become master and servant or employer and employee, the following:

‘The reality is, and has been for many years now throughout Canada, that individual relationships as between employer and employee have meaning only at the hiring

stage and even then there are qualifications which arise by reason of union security clauses in collective agreements.'

That passage was cited with approval by Mr. Justice Estey in the St. Anne case. At p. 12. D.L.R., p. 718 S.C.R., in the St. Anne case Mr. Justice Estey said:

'The collective agreement establishes the broad parameters of the relationship between the employer and his employees. This relationship is properly regulated through arbitration and it would, in general, subvert both the relationship and the statutory scheme under which it arises to hold that matters addressed and governed by the collective agreement may nevertheless be the subject of actions in the courts at common law.'

It is upon the basis of that reasoning that the appellant contends that the court here had no jurisdiction.

In my opinion, if the claims of the plaintiffs in these proceedings were that because of the pre-employment contracts, they could not be laid off pursuant to the terms of the collective agreement, clearly that would be a matter for arbitration, but those are not the claims advanced here. The trial judge found upon the basis of the evidence of the plaintiffs that they were given to understand that they would not be laid off for three years. That finding supports a conclusion that there were pre-employment contracts. These claims do not arise out of the collective agreement. They are claims arising out of a contract governed by common law principles. In my opinion, the court did have jurisdiction. I think that this is clear from what was said by Chief Justice Laskin in the McGavin case and approved, by Mr. Justice Estey in the St. Anne case. (Emphasis added.)

I respectfully agree with the view expressed by Hinkson J.A. which is, in essence, the basis upon which the trial Judge in the present case found in favour of the respondents and is, in my opinion, fatal to the position advanced by Dresser in support of these appeals.

Although the *Roberts* case, as well as the *Wainwright* case upon which it relied, related to pre-employment contracts involving unionized employees, the remedy is not restricted to circumstances whereby one seeks to circumvent the restrictive provisions of a collective agreement. On the contrary, it would have equal application to a non-unionized employee who

may have arrived at a separate contractual agreement with his or her employer prior to formally commencing employment, only to execute an agreement with the employer shortly after coming on board which contained provisions which were either inconsistent or different with the original agreement. One could argue that it is really nothing more than a specific application of the principles of collateral contracts.

SUMMARY

In light of the virtual demise of claims for punitive damages and damages for mental distress, as a result of the *Vorvis* decision, the scope for non-contractual damages in wrongful dismissal actions has been significantly curtailed.

These three recent decisions of the Ontario Court of Appeal provide some potential for non-contractual damages to the wrongfully terminated employee, in exceptional circumstances. However, the specific principles laid down in these decisions, as well as their general tenor, make it clear that courts continue to limit such non-contractual damage claims in wrongful dismissal actions.

FOOTNOTES

1. *Pilon v. Peugeot* (1980), 20 O.R. (2d) 711 (H.C.).
2. *Vorvis v. Insurance Corporation of British Columbia* (1989), 25 C.C.E.L. 81 [hereinafter *Vorvis*].
3. *Hedley Byrne & Co. v. Heller & Partners Ltd.*, [1964] A.C. 465.
4. *Wooldridge v. Nickerson & Sons Ltd and Canso Seafoods Ltd.* (1979), 39 N.S.R. (2d) 45 (N.S.S.C.) var'd 115 17 L.R. (3d) 97, 40 N.S.R. (2d) 388 [hereinafter *Wooldridge*].
5. *Queen v. Cognos Inc.* (1987), 63 O.R. (2d) 389.
6. *Queen v. Cognos Inc.* (1990), 30 C.C.E.L. 1.
7. *Ibid.* at 8-9.
8. *Ibid.* at 12-14.
9. *Central Canada Potash Co. v. Government of Saskatchewan* (1979), 88 D.L.R. (3d) 609 at 635 (S.C.C.).
10. *Roehl v. Houlahan* (1988), 9 A.C.W. (3d) 308, supplementary reasons in 11 A.C.W. (3d) 417 [hereinafter *Roehl*].
11. *Ibid.*
12. *Roehl v. Houlahan* (1990), 32 C.C.E.L. 221 at 226-227.
13. *Ibid.* at 228-229.
14. *Wainwright v. Vancouver Shipyard Co.* (1987), 14 B.C.L.R. (2d) 247, 38 D.L.R. (4th) 760.
15. *Roberts v. Dresser Industries Can. Ltd.* (1990), 28 C.C.E.L. 221 [hereinafter *Roberts*].
16. *Ibid.* at 224 and 227.