



SCC Deals with Falling Trees; Falling Leaves

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The Supreme Court of Canada released two leave to appeal judgments today of interest. One application for leave was granted. The other was dismissed:

In *Allstate v. Primmum*, a resident of Ontario was injured when he was struck by a pickup truck as he drove his motorcycle through North Carolina. His insurer, (Primmum) paid his statutory accident benefits as required under the standard Ontario Insurance policy. The other driver was at fault and was insured by Allstate. Both Allstate and Primmum are licensed in Ontario to undertake and sell automobile insurance.

Primmum sought indemnification from Allstate and the appointment of an arbitrator to settle the loss transfer dispute pursuant to s. 275 of Ontario's *Insurance Act*. Allstate refused on the basis that it was not an Ontario insurer and the accident did not occur in Ontario. Its position was that s. 275 of the Act cannot affect contracts between parties not resident in Canada in respect of losses occurring outside of Canada.

The Ontario Superior Court of Justice found that Allstate was an "insurer" under the Act and granted the application for the appointment of an arbitrator and the Court of Appeal for Ontario dismissed the appeal.

Allstate applied for leave to appeal.

In *City of Westmount v. Richard Rossy et al.*, a tree collapsed on an automobile and killed Gabriel Anthony Rossy, who was in the automobile. The respondents, his parents and three brothers, then brought an action in extracontractual liability against the applicant City of Westmount. They alleged that the City had failed to maintain the tree, which it owned, and that it was liable on that basis. At the preliminary stage, the City moved to dismiss the action on the ground that the damage had been caused by an automobile and that compensation was therefore governed by the Automobile Insurance Act. The respondent Société de l'assurance automobile du Québec was impleaded.

The Superior Court allowed the City's motion and dismissed the Rossy family's action. The Court concluded that, since the *Automobile Insurance Act* should be given a large and liberal interpretation based on its social and compensatory nature, the accident was covered by the Act because it had resulted in "damage caused by an automobile" within the meaning of s. 1 of the Act. On appeal, the Court of Appeal set aside the decision. It noted that, on the face of the pleadings, it was established that the tree's collapse was the sole cause of death and that there was nothing to connect the death with the fact that Mr. Rossy had been in an automobile. According to the Court, the automobile "was merely where Mr. Rossy was sitting when the tree collapsed". In short, the automobile "was not a factor in the accident or the damage resulting therefrom", which meant that the government compensation scheme did not apply in the circumstances.

The Rossy family applied for leave to appeal.

The Supreme Court dismissed Allstate's leave application. It granted the Rossy family's application for leave to appeal.

The *Allstate* decision affirms that Ontario insurers are required to submit to loss transfer arbitration upon demand, even where the accident happens outside Ontario.

The *Westmount* decision will provide the Supreme Court with a chance to rule on whether a tree falling on a vehicle constitutes a car accident under Quebec's auto insurance scheme. The decision will likely have an impact on auto insurance schemes across the country.

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