

## ***Vicarious Liability - How Far Does it Reach?***

A recent Ontario Court of Appeal decision confirms that a claim of vicarious liability against a company by a third party is not necessarily a one-way ticket to compensation.

In *Ivic v. Lakovic* (2107 ONCA 446), a taxi driver was accused of sexually assaulting a passenger in his car. The alleged victim sued the taxi company, claiming they were vicariously liable for the actions of its employee. The driver did not have a criminal record. In addition, there was no evidence that the taxi company had knowledge that the driver was likely to sexually assault a passenger.

The Court concluded that the alleged acts were only coincidentally connected to the taxi company and reinforced the principle that courts are “reluctant to impose no-fault liability for abhorrent, intentional acts on the part of an employee.” In coming to its conclusion, the Court reiterated the non-exhaustive list of factors used when assessing cases of vicarious liability, as previously set out by the Supreme Court of Canada:

- the opportunity that the enterprise afforded the employee to abuse his or her power;
- the extent to which the wrongful act may have furthered the employer’s aims (and hence be more likely to have been committed by the employee);
- the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer’s enterprise;
- the extent of power conferred on the employee in relation to the victim; and
- the vulnerability of potential victims to wrongful exercise of the employee’s power.

This case serves as a good reminder that it is essential for all employers to have policies in place that govern appropriate workplace conduct. These policies can be relied upon in circumstances where allegations of vicarious liability are made.

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