

**1657575 Ontario Inc., Operating as
Pleasures Gentlemen's Club v.
The Corporation of the City of Hamilton**

[Indexed as: 1657575 Ontario Inc. v. Hamilton (City)]

*Court of Appeal for Ontario, MacPherson, Rouleau and Epstein J.J.A.
July 31, 2008*

Administrative law — Natural justice — Fairness — Disclosure — City failing to provide licensee with grounds for proposed revocation of adult entertainment parlour licence as required by licensing by-law — Failure to provide proper disclosure tainting revocation hearing from outset — Licensee denied right to fair hearing — Decision to revoke licence quashed.

Municipal law — Licenses — City failing to provide licensee with grounds for proposed revocation of adult entertainment parlour licence as required by licensing by-law — Failure to provide proper disclosure tainting revocation hearing from outset — Licensee denied right to fair hearing — Decision to revoke licence quashed.

The appellant operated an adult entertainment parlour. The City's Director of Building and Licensing recommended a hearing to consider revoking the appellant's licence on the basis that it had not actively carried on business within a reasonable period of time following the issuance of the licence, in accordance with s. 14(1) of the city's general licensing by-law. A copy of that recommendation was not sent to the appellant as required by s. 14(1). The city subsequently sent the appellant a notice that a hearing on the revocation of licence had been scheduled. The notice referred to the recommendation, but did not include the grounds for the recommendation as required by s. 14(7) of the by-law. Counsel for the appellant requested disclosure of the evidence the city intended to rely upon at the hearing. Two days before the scheduled hearing, the Director sent a letter which failed to clearly define the issue to be determined. At the conclusion of the hearing, the licensing committee voted to recommend revocation of the appellant's licence to the city council. The council accepted the recommendation and revoked the licence. The appellant's judicial review application was dismissed. The appellant appealed.

Held, the appeal should be allowed.

Disclosure is a basic element of natural justice at common law and, in the administrative context, procedural fairness generally requires disclosure unless some competing interest prevails. The duty of procedural fairness in the circumstances of this case required, at a minimum, that the licensing committee have provided the appellant with the basis of the proposed revocation and an accurate statement of the grounds. The city did not comply with the procedural safeguards set out in the licensing by-law, and breached its duty to treat the appellant fairly. The failure to provide proper notice tainted the hearing from the outset, and the appellant was denied its right to a fair hearing. In cases involving breaches of procedural fairness, the court will generally set aside the decision without considering whether the result would have been the same had there been no unfairness. It was unnecessary to consider whether, had full disclosure been provided, the appellant would still have been unable to persuade the licensing committee members to reach a different decision. The revocation of the appellant's licence was quashed.

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39, 174 D.L.R. (4th) 193, 243 N.R. 22, J.E. 99-1412, 14 Admin. L.R. (3d) 173, 1 Imm. L.R. (3d) 1, 89 A.C.W.S. (3d) 777, ap'd

Other cases referred to

Cardinal v. Kent Institution, [1985] 2 S.C.R. 643, [1985] S.C.J. No. 78, 24 D.L.R. (4th) 44, 63 N.R. 353, [1986] 1 W.W.R. 577, J.E. 86-41, 69 B.C.L.R. 255, 16 Admin. L.R. 233, 23 C.C.C. (3d) 118, 49 C.R. (3d) 35, 15 W.C.B. 331; *London (City) v. Averswood Development Corp.*, [2002] O.J. No. 4859, 167 O.A.C. 120, 34 M.P.L.R. (3d) 1, 119 A.C.W.S. (3d) 664 (C.A.); *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, [2005] S.C.J. No. 84, 2005 SCC 82, 261 D.L.R. (4th) 541, 343 N.R. 69, [2006] 5 W.W.R. 65, J.E. 2006-103, 220 B.C.A.C. 1, 49 B.C.L.R. (4th) 199, 204 C.C.C. (3d) 1, 34 C.R. (6th) 228, 136 C.R.R. (2d) 146, 68 W.C.B. (2d) 59; *Waxman v. Ontario (Racing Commission)*, [2006] O.J. No. 4226, 216 O.A.C. 353, 53 Admin. L.R. (4th) 271, 152 A.C.W.S. (3d) 361 (Div. Ct.)

Authorities referred to

Jones, David, and Anne De Villars, *The Principles of Administrative Law*, 4th ed. (Scarborough, Ont.: Thompson Carswell, 2004)

APPEAL from the judgment of the Divisional Court, [2007] O.J. No. 1437, 224 O.A.C. 27 dismissing an application for judicial review of the revocation of a licence.

James M. Wortzman and Karey Anne Dhirani, for appellant.
Gary J. Kuzyk, for respondent.

The judgment of the court was delivered by

ROULEAU J.A.:

Overview

[1] The appellant, 1657575 Ontario Inc. operating as Pleasures Gentlemen's Club, a strip club, appeals the dismissal of an application for judicial review, in which it sought (a) an order quashing the City of Hamilton Licensing Committee's recommendation and Hamilton City Council's decision to revoke the appellant's licence to operate an adult entertainment parlour; and (b) an order reinstating the appellant's licence.

[2] The main issue in this appeal is whether the city breached the appellant's right to a fair hearing. For the reasons that follow, it is my view that the city did not comply with the procedural safeguards set out in its own by-law in recommending the revocation of the appellant's licence and, in failing to do so, breached its duty to treat the appellant fairly and provide proper disclosure. As a result, I would set aside the judgment of the Divisional Court, quash the committee's recommendation and the council's

resolution to revoke the appellant's licence and reinstate the appellant's licence.

Facts

[3] Adult entertainment parlours in Hamilton are regulated by the city's general licensing by-law, By-law 01-156 (the "by-law"). Within this by-law, the city expresses its intention to reduce the number of adult entertainment parlours in the city from four to two. The reduction is to be achieved by the expiration or revocation of existing licences. One way to revoke licences is as follows. The "Issuer of Licences" can recommend a hearing before the city council's licensing committee to determine whether a licence should be suspended or revoked on the basis that the licensee had not actively carried on business "within a reasonable period of time" following issuance or renewal of the licence.

[4] The by-law sets out a number of procedural safeguards for licensees. Where the issuer of licences recommends revoking a licence, s. 14(4) sets out the required contents of the recommendation, and provides that this recommendation must be sent to the licensee:

The recommendation of the Issuer of Licences shall be in writing and contain the grounds upon which the licence is recommended to be suspended or revoked, and shall be sent to the licensee and the Secretary.

[5] The licensee is also entitled to a hearing to consider whether its licence should be revoked or suspended. The written notice of the hearing, which is also to be sent to the licensee and the issuer of the licences (s. 14(6)), must "include or attach the grounds [for suspension or revocation] as provided by the Issuer of Licences or Council" (s. 14(7)).

[6] In addition, s. 16(3) of the by-law requires the licensing committee, in making a decision, to consider the following specific factors:

- (a) this By-law and other applicable law;
- (b) circumstances and facts raised by the evidence of the parties;
- (c) the legitimate business interests of the applicant or licensee; and
- (d) whether the business is or will be carried on in compliance with the law, and whether the conduct of the person, or in the case of a corporation, the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that the person will not carry on or engage in the business in accordance with the law or with honesty or integrity.

[7] The appellant was granted an adult entertainment licence on March 21, 2006, for the premises at 1038 Barton Street East,

Hamilton (the "Barton premises"). The appellant paid the city \$4,180 for the licence. Rita Owen, the sole officer and director of the appellant, intended to open as soon as she obtained a liquor licence.

[8] Ms. Owen was also the sole officer and director of another adult entertainment business: 1562423 Ontario Inc., operating as Stilletto's. This business had held an adult entertainment parlour licence since at least June 2004, but was not in operation at the relevant time. Ms. Owen intended to re-open Stilletto's at the same time as she opened the Barton premises. However, in March 2006, the city revoked the licence for Stilletto's because of its failure to actively carry on business within a reasonable period of time following issuance or renewal of the licence. In response, Stilletto's alleged that the licensing committee had prejudged the matter and violated procedural fairness. Stilletto's was originally a party to this application for judicial review but was forced to abandon the application due to financial difficulties.

[9] On May 11, 2006, the Director of Building and Licensing recommended a hearing to consider revoking the licence for the Barton premises on the basis that the licensee had not actively carried on business within a reasonable period of time following the issuance of the licence: see s. 14(1). A copy of this recommendation was not sent to the licensee as required by s. 14(1).

[10] On May 24, 2006, the city sent the appellant a notice that a hearing to revoke its licence had been scheduled for July 6, 2006. The notice referred to the recommendation of revocation by the Standards & Licensing Division, but did not include the grounds for this recommendation as the Standards & Licensing Division had set them out, as required by s. 14(7) of the by-law. Instead, the grounds described in the notice were as follows:

The grounds for the hearing are:

(a) The following documents:

- (i) Certified copy of expired liquor licence.
- (ii) Certified copy of cancellation notice of liquor licence application.
- (iii) Inspection reports of Standards & Licensing Inspectors.
- (iv) City of Hamilton Adult Entertainment Parlour Licence.
- (v) City of Hamilton "Sale of Lands for Tax Arrears" notice.
- (b) By-law 01-156, and in particular Sections 3 and 16 (copy attached).

[11] In response, appellant's counsel requested disclosure of the evidence the city intended to rely upon at the hearing. The

Director of Building and Licensing responded to the disclosure request by letter on July 4, 2006, two days before the scheduled hearing. The director's letter indicated simply that the city would introduce the following evidence at the hearing:

- (1) The Alcohol and Gaming Commission Inspector Jason Thompson is expected to address the licensing status of 1038 Barton Street East, both the current and past licensing status. For example how long this location was unlicensed and when a license was applied for.
- (2) The City of Hamilton Licensing Inspectors are expected to address inspections carried out indicating that the business was closed on numerous occasions.
- (3) A copy of the Sale of Lands for Tax Arrears Notice.

[12] Appellant's counsel responded to this letter on July 5, 2006, requesting a copy of any and all evidence the city intended to rely upon at the hearing as well as any "will say" statements with regard to the anticipated evidence of the Alcohol and Gaming Commission of Ontario and the city's licensing inspectors. The city never responded to this request.

[13] Ms. Owen and her counsel attended at the hearing before the licensing committee on July 6, 2006. At the outset of the hearing, counsel for the appellant raised an issue with respect to the failure to provide disclosure, but no adjournment was granted and the hearing proceeded on the merits.

[14] At the hearing, it became apparent that information provided by the city in its May 11 and July 4 letters was, to a large extent, false or misleading:

- (a) None of the documents referred to in the city's letters were ever provided to the appellant;
- (b) items (i) and (ii) in the May 24 letter did not exist;
- (c) the evidence given by the city's witness was that the liquor licence application had not been cancelled;
- (d) no sale of land for tax arrears was ever raised at the hearing; and
- (e) AGCO Inspector Thompson did not attend or give evidence at the hearing. (The Licensing Committee did, however, hear testimony from a licensing inspector and a liquor licensing constable employed by the city to the effect that

the premises had not been operated after issuance of the licence.)

[15] By this point, Ms. Owen would certainly have become aware of the basis upon which the city was seeking to revoke the licence. In her evidence on behalf of the appellant, she testified as to the efforts made to open the Barton premises for business. She indicated that she had dancers ready to work but had encountered difficulties in acquiring a liquor licence. She indicated her intention to open for business immediately, without alcohol, and to operate in that manner until obtaining the liquor licence.

[16] At the conclusion of the hearing, the licensing committee voted unanimously to recommend to city council revocation of the appellant's licence for failure to actively carry on business within a reasonable time.

[17] Faced with the recommendation of the committee and knowing the basis for the proposed revocation, the appellant immediately opened the premises for business on July 10, 2006, notwithstanding the absence of a liquor licence. Counsel for the appellant then learned that the committee's recommendation had been added to council's agenda for its July 12, 2006 meeting. He therefore faxed submissions to the mayor and council members summarizing the appellant's position, confirming that the premises were now open and requesting that council refer the matter back to the committee or decline to follow the recommendation. He also faxed to city council a statutory declaration stating that the premises were open for business. However, this fax was not received by council prior to the vote because, unbeknownst to the appellant, the council meeting time had been changed from evening to day time.

[18] At its meeting, the council accepted the committee's recommendation and revoked the appellant's licence.

Divisional Court Proceeding

[19] The appellant brought an application for judicial review before the Divisional Court, arguing that the licensing committee had revoked its licence in a way that was procedurally unfair or that constituted a denial of natural justice. The Divisional Court dismissed the application, finding that the appellant had been given particulars of the complaint, that the only issue before the licensing committee was whether the business was being carried on, that the evidence did not establish bias or bad faith and that any difficulties the appellant encountered in obtaining the liquor licence were not the responsibility of the council or the licensing committee.

[20] This court granted the appellant leave to appeal the judgment of the Divisional Court. Leave was restricted to the issue of whether the appellant was denied procedural fairness in respect of the proceedings of the licensing committee and council.

Issues

[21] On appeal, the appellant's main submission is that the Divisional Court erred in rejecting its argument that it was not accorded the high level of procedural fairness to which it was entitled. In support of this position, the appellant pointed to the procedural protections included in the by-law and the city's failure to comply with these provisions, as well as to make full disclosure. The appellant also argued that the Divisional Court erred in rejecting its submission that the licensing committee was biased against the appellant and made its decision in bad faith.

[22] In my view, the respondent's failure to provide proper disclosure tainted the hearing from the outset and denied the appellant its right to a fair hearing. This failure to comply with its obligation of procedural fairness is sufficient to set aside the licensing committee's recommendation and council's decision adopting it. Thus, the additional issues of bias and bad faith need not be addressed by this court.

Analysis

(a) *Standard of review*

[23] It is not necessary to assess the appropriate standard of review when considering an allegation of a denial of procedural fairness. This principle was explained in *London (City) v. Averswood Development Corp.*, [2002] O.J. No. 4859, 167 O.A.C. 120 (C.A.), at para. 10, as follows:

When considering an allegation of a denial of natural justice, a court need not engage in an assessment of the appropriate standard of review. Rather, the court is required to evaluate whether the rules of procedural fairness or the duty of fairness have been adhered to. The court does this by assessing the specific circumstances giving rise to the allegation and by determining what procedures and safeguards were required in those circumstances in order to comply with the duty to act fairly.

(b) *Procedural fairness and the disclosure obligation*

[24] The extent of the procedural rights encompassed in the duty of fairness depends on the content of the particular statute or regulation and on the nature of the rights affected. The criteria to be considered in determining the content of the duty of procedural fairness include:

- (a) the nature of the decision being made and the process followed in making it;
- (b) the nature of the statutory schemes and the terms of the statute pursuant to which the body operates;
- (c) the importance of the decision to the individual affected;
- (d) the legitimate expectations of the person challenging the decision; and
- (e) choices of procedure made by the agency itself.

See *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39, at paras. 21-27.

[25] Disclosure is a basic element of natural justice at common law and, in the administrative context, procedural fairness generally requires disclosure unless some competing interest prevails. As discussed in David Jones and Anne De Villars, *Principles of Administrative Law*, 4th ed. (Scarborough, Ont.: Thomson Carswell, 2004), at 258:

The courts have consistently held that a fair hearing can only be had if the persons affected by the tribunal's decision know the case to be made against them. Only in this circumstance can they correct evidence prejudicial to their case and bring evidence to prove their position. Without knowing what might be said against them, people cannot properly present their case.

See also *May v. Ferndale Institution*, [2005] 3 S.C.R. 809, [2005] S.C.J. No. 84, at paras. 92-93.

[26] As noted by Lane J. in *Waxman v. Ontario (Racing Commission)*, [2006] O.J. No. 4226, 216 O.A.C. 353 (Div. Ct.), at para. 11, the failure to make proper disclosure has the effect of rendering the process "irretrievably tainted with unfairness from the outset".

[27] In cases involving breaches of procedural fairness, the court will generally set aside the decision without considering whether the result would have been the same had there been no unfairness. This principle was recognized by the Supreme Court in *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643, [1985] S.C.J. No. 78, at p. 661 S.C.R., in which LeDain J. rejected the suggestion by counsel that a relevant consideration in the procedural fairness analysis is whether the holding of a hearing would have persuaded authorities to change their minds on the decision made:

[T]he denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing

must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for the court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

[28] In my view, therefore, the central issue for consideration in this case is the impact that the failure to make disclosure had on the appearance of justice and the fairness of the hearing. I need not consider whether, had full disclosure been provided, the appellant would still have been unable to persuade the licensing committee members to reach a different decision.

(c) Application

[29] Applying the criteria outlined in *Baker*, it is apparent that the duty of procedural fairness in the circumstances of this case requires, at a minimum, that the committee have provided the licensee with the basis of the proposed revocation and an accurate statement of the grounds. We need go no further than the by-law, which mandates that this information be provided to the licensee not once, but twice: first, when the original recommendation is made and again when the notice of hearing is sent: see ss. 14(4) and 14(7). In my view, such a requirement reflects the principle that when one's ability to carry on business is being put at risk, one should not have to guess why revocation of the licence is being proposed or speculate as to the grounds for the proposed revocation.

[30] The notice provided by the city on May 24, 2006, made no reference to s. 14(1)(e) as the basis for the proposal and failed to comply with the obligation to disclose the grounds for the recommendation to revoke the appellant's licence as prescribed in s. 14(4) of the by-law. The grounds identified simply referred to a series of largely irrelevant documents and sections of the by-law relating to the committee's process and procedures. It would have been impossible for the appellant to extract from this notice any meaningful understanding of the grounds for the recommendation to revoke its licence. In fact, as I have noted earlier, the notice itself was misleading in respect of the type of evidence that would be introduced at the hearing.

[31] The subsequent letter from the city, dated July 4, 2006, came two days before the hearing and served only to further mislead the appellant about the nature of the evidence to be introduced at the hearing. While the letter referred to the licensing inspector's being expected to provide evidence that the business was closed on numerous occasions, it failed to clearly define the issue to be determined before the committee.

[32] In my view, therefore, the Divisional Court erred when it found that the appellant "was given particulars of the complaint" and when it concluded that there had been no procedural unfairness.

[33] The respondent also argued that the failure to comply with the by-law did not affect the fairness of the hearing because, by the date of the committee hearing, the appellant was clearly aware of the grounds and basis for the proposed revocation. The appellant, therefore, suffered no prejudice in that Ms. Owen addressed the grounds for the proposed revocation. She gave evidence of the extensive efforts she had undertaken to open the Barton premises for business. Specifically, she testified to the difficulties encountered in acquiring a liquor licence and the unsponsiveness of the retail sales tax branch noting that, but for the outstanding retail sales tax issue, the business would be open. The respondent submits, therefore, that the appellant was able to meet the case against it and therefore suffered no prejudice because of the delay in disclosure.

[34] I would reject this submission for two reasons. First, as I have said, the failure to advise the appellant of the basis or the grounds for the revocation contravened the provisions of the city's own by-law and, on the facts of this case, was procedurally unfair.

[35] Second, the respondent's submission that the appellant suffered no prejudice as a result of the delay is pure speculation. Indeed, an argument could be made that earlier disclosure would have affected the appellant's conduct. Immediately after the committee hearing and before the council meeting, the appellant decided to open for business notwithstanding the absence of a liquor licence. If proper disclosure had been made, the appellant would have known well before the hearing date that the failure to open was the basis of the recommendation. As a consequence, it may for example have commenced operation of the business well prior to the committee hearing. How the decision maker would have responded to any of this changed conduct is irrelevant. It is not for this court to speculate as to whether the result would have been the same had there been timely and adequate disclosure: see *Cardinal v. Kent Institution*, *supra*, at p. 661 S.C.R.

Conclusion

[36] The city failed to comply with the procedural safeguards for licensees included in the by-law by failing to provide proper disclosure. Considered together, the notice and subsequent letter provided by the city failed to provide the appellant with the

opportunity to know the case against it and to take appropriate steps to prepare and present evidence in support of its position. In these circumstances, the failure to provide proper disclosure tainted the hearing from the outset and the appellant was denied its right to a fair hearing.

[37] The decision cannot stand and I would set aside the judgment of the Divisional Court and quash the licensing committee's recommendation that the appellant's licence be revoked as well as the council's resolution adopting the recommendation. The effect of this decision is to reinstate the appellant's licence.

[38] I would award the appellant its costs in the Divisional Court on a partial indemnity basis fixed at \$45,000 and its costs of the leave to appeal and appeal on a partial indemnity basis fixed at \$40,000, both inclusive of GST and disbursements.

Appeal allowed.

Loftus v. Robertson et al.

Loftus v. Robertson et al.; The Corporation of the City of Peterborough, Third Parties

[Indexed as: Loftus v. Robertson]

Superior Court of Justice, MacDougall J. July 25, 2008

Insurance — Automobile insurance — Uninsured automobile coverage — Insured having no obligation under s. 265 of Insurance Act to sue alleged tortfeasor before being entitled to payment of claim under s. 265 of Insurance Act, R.S.O. 1990, c. I.8, s. 265.

The plaintiff was driving her vehicle, which was insured by the defendant, when it was struck by R, who was operating an uninsured motor vehicle. At the time of the collision, R was being pursued by a police officer. The plaintiff brought an action against the defendant for payment of her claim under s. 265 of the *Insurance Act*. She did not sue the police. The defendant brought third-party proceedings against the police and the municipality alleging that they caused or contributed to the collision. The defendant moved under Rule 22 of the Rules of Civil Procedure, R.O. 1990, Reg. 194 for the determination of a special case, asking the court whether, assuming negligence on the part of the third parties caused or contributed to the plaintiff's injuries, the defendant was liable to make any payment to the plaintiff under s. 265 of the Act.

Held, the question should be answered in the affirmative.

There is no obligation on an insured under s. 265 of the Act to sue the alleged tortfeasor. To hold that such an obligation exists would render the mandatory uninsured coverage illusory and worthless.

Craig v. Allstate Insurance Co. of Canada (2002), 59 O.R. (3d) 590, [2002] O.J. No. 2124, 214 D.L.R. (4th) 103, 161 O.A.C. 140, 39 C.C.L.I. (3d) 91, 25 M.V.R. (4th) 143, 114 A.C.W.S. (3d) 304 (C.A.), *consd*

Other cases referred to

Barton v. Aitchison (1982), 39 O.R. (2d) 282, [1982] O.J. No. 3510, 139 D.L.R. (3d) 627, [1982] I.L.R. ¶11-1584 at 1110, 16 A.C.W.S. (2d) 430 (C.A.); *Gignac v. Neufeld* (1999), 43 O.R. (3d) 741, [1999] O.J. No. 1295, 173 D.L.R. (4th) 701, 119 O.A.C. 43, 10 C.C.L.I. (3d) 228, 41 M.V.R. (3d) 230, 87 A.C.W.S. (3d) 795 (C.A.); *Kosanovic v. Wauanesa Mutual Insurance Co.* (2004), 70 O.R. (3d) 161, [2004] O.J. No. 1234, 184 O.A.C. 269, 8 C.C.L.I. (4th) 225, 49 M.V.R. (4th) 165, 237 D.L.R. (4th) 441, 129 A.C.W.S. (3d) 1206 (C.A.)

Statutes referred to

Insurance Act, R.S.O. 1990, c. I.8, s. 265
Motor Vehicle Accident Claims Act, R.S.O. 1990, c. M.41, s. 7(3)

Rules and regulations referred to

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rule 22
Uninsured Automobile Coverage, R.R.O. 1990, Reg. 676, ss. 2(1)(b), (c), 5

MOTION for a determination of a special case.

John R. McCarthy, for plaintiff.
Don Harvey, for defendant Security National
Russell M. Palin, for third parties.

[1] MACDOUGALL J.: — The defendant Security National Insurance Company ("Security National") moves to have a special case determined under Rule 22 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, on consent of the other parties.

[2] For the purposes of this special case, the facts agreed to can be briefly summarized as follows: the plaintiff was operating her motor vehicle, which was insured by Security National, when it was struck by the defendant Christian Robertson ("Robertson"), who was operating an uninsured motor vehicle. At the time of the collision, Robertson was being pursued by a member of the Peterborough Lakefield Community Police Services (the "police"), who was driving a police cruiser. The plaintiff has not brought a claim for damages against the police. Security National has brought third-party proceedings against the City of Peterborough, the Police Board and the police chief alleging that they caused or contributed to the collision and resulting injuries sustained by the plaintiff.

[3] The question for the opinion of the court is:

Assuming negligence on the part of the Third Parties, or any of them, caused or contributed to the injuries and damages sustained by the plaintiff, is Security National liable to make any payment to the plaintiff pursuant to the coverage required under s. 265 of the *Insurance Act*, R.S.O. 1990, c. I.8?