

TRIAL LAWYERS ASSOCIATION *of* BC

SUMMARY – *TLABC v. British Columbia (Attorney General)*, 2021 BCSC 348 3 March 2021

Together with a group of individual plaintiffs, TLABC challenged the suite of legislative amendments by which the government attempted to divert the resolution of certain motor vehicle accident claims out of B.C. Supreme Court and into an administrative tribunal – the government’s online Civil Resolution Tribunal. The government’s scheme would have given the CRT the power to decide whether certain accident injuries were “minor” (as the government defines that term), and to decide accident claims under \$50,000.

The TLABC’s challenge was brought on the basis that the scheme violated s. 96 of the *Constitution Act, 1867*. Section 96 protects against the assignment to the government (that is, to its tribunals and agencies) of judicial functions that were exclusive to the superior courts at Confederation, in 1867.

Before assessing the constitutionality of the scheme, Chief Justice Hinkson had to decide whether TLABC is an appropriate litigant to bring these issues forward. He agreed that it is, and granted TLABC “public interest standing” to bring the challenge.

Turning to the substance of the challenge, Chief Justice Hinkson determined that the grant of power to the Civil Resolution Tribunal to decide accident claims (and aspects of those claims) was unconstitutional because, historically, the power to decide personal injury claims and their value belonged exclusively to the superior courts.

The Chief Justice’s reasons are lengthy because the legal test for the constitutionality of a grant of power to an administrative tribunal begins with an investigation of which types of court exercised the power at issue at the time of Confederation. To succeed, TLABC had to show that the power at issue was exercised exclusively by the provincial superior courts of three of the four original provinces. Chief Justice Hinkson agreed with the TLABC’s analysis of the historical statute books, and was satisfied that the power in issue – the power to adjudicate personal injury claims in tort – was not one that the provincial superior courts historically shared with inferior courts or tribunals.

The Chief Justice likewise accepted that although the government can theoretically “transform” an exclusive court power by giving it to an administrative tribunal in the context of comprehensive, substantive law reform, he again agreed with TLABC that this was not such a

scheme. This scheme was merely a straightforward assignment of the power to decide some accident claims, or parts of them, to the CRT.

The effect of the decision is to recognize that personal injury claims are exclusively within the domain of the superior courts. Jurisdiction over them cannot simply be handed to the government's online tribunal, whether in whole or part.