

THE

VOGEL INSIDER

LAWYER SPOTLIGHT: DOUG PERRAS

SUMMARY OF
JUDICIAL DECISION:
TRIAL VICTORY
FOR VOGEL LLP

VICTOR VOGEL NAMED QUEEN'S COUNSEL

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SPRING 2014 ISSUE

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Welcome from Vogel LLP

We are pleased to share the Spring 2014 Edition of "The Vogel Insider" with you. In this edition, you can find information about our recent successful cases, Vogel LLP lawyer spotlights, interesting articles related to our industry and highlights of our work in the community.

We also enjoy incorporating our clients into "The Vogel Insider" by sharing the positive feedback you pass along to us. If you have any ideas for articles for our next edition, we would greatly appreciate your input.

Trial Victory for Vogel LLP

Doug Perras and Mike Vogel of Vogel LLP recently represented Mr. Swagar in his personal injury claim that went to trial against Superstore. On July 3, 2008, Mr. Swagar entered a local Calgary Superstore to purchase groceries. Unfortunately, while in the store, he slipped on a broken egg. Due to the nature of the fall, this resulted in Mr. Swagar sustaining a tear in his rotator cuff requiring surgical intervention to repair. Superstore was ultimately found fully liable for

Mr. Swagar's injuries.

The evidence of Mr. Swagar was that the fall occurred in the produce department. He did not see anything unusual while walking through the store but noticed after falling that there were egg remnants on the ground but absolutely no eggshell. In observing the area, Mr. Swagar testified that a carton of eggs was found in a nearby garbage can and that an employee of the store was nearby the accident scene with a mop in hand. He further indicated that the employee was reluctant to get a manager to attend the accident scene.

Superstore relied on the evidence of their corpo-

rate officer and store records in their defence. They did not call the manager or any employees who had direct knowledge in relation to the incident. It was acknowledged that Superstore had video footage throughout their store but did not preserve anything in relation to this incident. It was also acknowledged that the Superstore employees breached their own policy in improperly completing the Superstore Sweep Log on the day of the accident. Superstore also admittedly breached portions of their own incident reporting policies.

The Trial Judge outlined that to properly defend this type of case, Superstore must first show that they had a reasonable system to keep the premises reasonably safe from foreseeable harm. They then need to show that they actually adhered to and followed that system.

In applying the law to the facts of Mr. Swagar's case, the Trial Judge found that Superstore did in fact have practical policies in place to ensure that patrons would be reasonably safe while attending the store.

However, it was found by the Judge that Superstore did not follow their own policies in respect to the handling of this incident. Superstore failed to call any witnesses who had an actual involvement in the matter. Their Sweep Log was inadequately completed, which brought into question its reliability. Contrary to their own policy, the video footage was not maintained. Photographs of the accident scene were not taken until the following day as opposed to Superstore's stated policy being to take them as soon as possible after the accident.

It was ultimately found that Superstore failed to discharge their onus to prove that there was compliance with their own policies on the day the accident occurred. Consequently, it was determined that Superstore breached their duty of care to Mr. Swagar as a visitor to the store and they ultimately failed to take reasonable steps to maintain their floors in a safe condition for their customers. As such, Superstore was found fully liable for Mr. Swagar's injuries.



Work Related Fatality

In 2012 Garry Jones (the name(s) has been changed to protect confidentiality) was checking gas flow on a well site near Fox Creek Alberta. It had rained earlier and the dirt road into the site was muddy so Garry made the decision to park his truck a couple hundred meters away and walk. In order to complete the test Garry needed to make several trips back to his truck to get equipment. Something went wrong and Garry called his dispatch for help. An ambulance was sent but Garry did not survive. He was pronounced dead upon his arrival at hospital.

Although this particular well was known to contain H₂S (sour gas) the doctors at the hospital believed that Garry died from a heart attack and no autopsy was performed. Based on the opinion of the doctors at the hospital, the Workers' Compensation Board ruled that Garry's death was not work related and denied his wife a widow's pension. Garry's wife was a stay-at-home mother who had never worked. The Workers' Compensation Board ruling would mean extreme hardship for her in her elder years.

Ms. Jones retained Vogel LLP to look into the matter. An appeal was filed with the Workers' Compensation

Board and several hearings were held. Eventually, the appeal reached the Appeals Commission and the appeal was heard. By then it was many years since Garry had passed away and his widow's finances were bleak, to say the least. The Appeals Commission took over nine months to make its decision but in the end ruled that the pension should be allowed. Over her lifetime Mrs. Jones will receive in excess of \$800,000.00 from the pension.

Sometimes what initially appears obvious is not. If you know of someone who has been denied accidental death benefits by an insurance company, widow's pension by Workers' Compensation or has sustained serious injury you should recommend that a competent lawyer assist them. Serious claims merit serious consideration.

Lawyer Profile

Doug Perras

After working as a teacher, guidance counselor and high school principal, Doug decided to switch gears and pursue his Law Degree. A graduate of the University of Calgary, Doug's primary area of practice is personal injury. He represents individuals who have suffered catastrophic life changing injuries, families who have lost loved ones due to the negligent acts of others or through work place injuries.

Doug also specializes in sexual assault claims, representing individuals who have been sexually assaulted while at work, by a professional caregiver, or while confined in an institution by a government authority.

Additionally, Doug does arbitration work for the Federal Government on behalf of the Minister of Natural Resources. He arbitrates land claim disputes, right-of-way disputes and damages disputes between pipeline operators and landowners.



Victor Vogel Named Queen's Counsel



Originating in England in the 16th century, the Queen's Counsel designation was established to recognize top legal talent. This distinction has since expanded throughout various Commonwealth jurisdictions and on December 31, 2013, Vogel LLP's founding Partner Victor Vogel was appointed with this prestigious designation. Minister of Justice and Solicitor General, Jonathan Denis stated: "The Queen's Counsel

designation recognizes the exceptional capabilities and talents of this year's impressive group. These lawyers are a credit to their profession and to their province."

In Alberta, the Queen's Counsel designation is bestowed on the province's top lawyers every two years in recognition of their legal and community accomplishments. Both the Law

Society of Alberta and the Alberta Government assist in the screening process to award this to top lawyers in the Province. Together they selected Victor as a recipient of this highest legal honour.

Victor has contributed to this profession and the community for many years. He has practiced law for over 34 years, has trained and mentored many lawyers and has been involved with many worthwhile charities and community initiatives. Victor has sat on charitable boards including HomeFront and the Learning Disabilities Association of Alberta – Calgary Chapter. He has served on a number of committees with the Law Society of Alberta. In his legal practice, Victor has represented thousands of Albertans and his hard work and commitment to providing superior legal services has without question assisted in Victor receiving this appointment.

Congratulations to our very own, Victor H. Vogel, Q.C.

Erica Pridham

Vogel LLP is pleased to announce that Erica Pridham has joined our team as an associate. Erica is a graduate of the University of Victoria and was admitted to the Alberta Bar in 2012. She is currently accepting new clients in the area of family law.



(Left to Right) Andy Hayher, Hon. Manmeet Bhullar, Jim Prentice, Q.C. and Mike Vogel at PC Leader's Dinner in Calgary on May 8, 2014.



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