Ontario Court Holds Law of Bangladesh Applies to Rana Plaza Collapse Claim

The Court of Appeal for Ontario has upheld a decision of the Superior Court of Justice dismissing a $2 billion claim against Loblaws relating to the 2013 collapse of the Rana Plaza building in Savar, Bangladesh. In *Das v George Weston Limited*, 2018 ONCA 1053 (available here) the court concluded that the claims were governed by the law of Bangladesh (not Ontario). It went on to conclude that most of the claims were statute barred under the Bangladeshi limitation period and that it was "plain and obvious" that the remaining claims would fail under Bangladeshi tort law.

Unlike some of the recent cases in this area, this was not a case about a Canadian parent corporation and the operations of its own foreign subsidiary. It was a case about a contractual supply relationship. Loblaws bought clothes (to sell in its Canadian retail stores) from corporations whose workers manufactured the clothes in Rana Plaza.

The key conflict of laws point was the choice of law issue. The rule in Ontario is that tort claims are governed by the law of the place of the tort: *Tolofson v Jensen*, [1994] 3 SCR 1022. The plaintiffs had argued that they were suing Loblaws for negligent conduct that exposed those working in Rana Plaza to harm. They argued that Loblaws had, by adopting corporate social responsibility policies and hiring Bureau Veritas to conduct periodic "social audits" of the workplace, assumed a degree of responsibility for the safety of the workplace in Bangladesh (para 20). They argued that the key steps and decisions by Loblaws took place in Ontario rather than in Bangladesh and therefore Ontario was the place of the tort (para 80). The court rejected these arguments. It held that the place where the alleged wrongful activity occurred was Bangladesh (para 85), that the alleged duty was owed to people in Bangladesh (para 87) and that the injury suffered in Bangladesh "crystallized the alleged wrong" (para 90).

The court also refused to apply *Tolofson*'s narrow exception to the place of the tort rule. One reason the plaintiffs raised for triggering the exception was the

lack of punitive damages under the law of Bangladesh. The court noted that the lower court's decision had suggested such damages might actually be available under that law, but in any case "the absence of the availability of punitive damages is not the type of issue that offends Canadian fundamental values" (para 95). The court raised no basis on which to disagree with this analysis.

Because the applicable law was that of Bangladesh, and because some of the claims were not statute-barred, the court was required to do a detailed analysis of Bangladeshi tort law on the duty of care issue in order to determine whether those claims were to be dismissed as not viable. This aspect of the decision may be the most disquieting, since there was little if any on-point authority in the Bangladeshi jurisprudence (para 130). The court had to rely on experts who were relying on a considerable volume of Indian and English cases and then debating the extent to which these would impact the issue if determined by a Bangladeshi court. Ultimately the court concluded that under Bangladeshi law the claims could not succeed.