Clerk's stamp:

Court File Number	1703 12327
Court:	COURT OF QUEEN'S BENCH OF ALBERTA
Judicial Centre	EDMONTON
	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
	AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF CANADA NORTH GROUP INC., CANADA NORTH CAMPS INC., CAMPCORP STRUCTURES LTD., D.J. CATERING LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD. and 1919209 ALBERTA LTD.
Applicant	CANADA NORTH GROUP INC., CANADA NORTH CAMPS INC., CAMPCORP STRUCTURES LTD., D.J. CATERING LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD. and 1919209 ALBERTA LTD.
Document	**BRIEF OF THE APPLICANTS**
Hearing	**APRIL 20, 2018 AT 10:00 AM**
Address for Service and Contact Information of Party Filing this Document	MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 swanke@millerthomson.com Attention: Stephanie Wanke

1. The Applicants rely on the Brief filed for the March 20, 2018 application in connection with their present applications to:

   (a) Extend the Stay of Proceedings;

   (b) Authorize the sale of the Winterburn property; and

   (c) Expand the powers of the Monitor in keeping with a liquidating CCAA for the assets not sold as part of the Camp Transaction (as defined in the March 20, 2018 Order in this action).

2. The remaining applications are to allow certain accounts receivable that pre-date this CCAA and are held by Canada North Camps Inc. and Campcorp Structures Inc. to transfer as part of the Camp Transaction, for the benefit of Canadian Western Bank and the Camp Transaction parties.

3. Canadian Western Bank is the first secured creditor against these accounts receivable.

4. Without the accounts receivable and related claims transferring as part of the Camp Transaction, given the CCAA proceedings, it is unlikely Canadian Western Bank will be able to effect recovery against these assets.

5. Logistically, the Campcorp Structures Inc. account receivable in question can transfer simply by <u>not</u> stripping it out of Campcorp Structures Inc. prior to the Camp Transaction. Accordingly, the Applicants are seeking an amendment to the Camp Transaction to allow that claim to stay with Campcorp Structures Inc.

6. As Canada North Camps Inc. is not being sold as part of the transaction, that receivable needs to be assigned, as does the underlying litigation.

7. As confirmed by the Court of Appeal in *1773907 Alberta Ltd.* v. *Davidson*, 2015 ABCA at para 21 **[Tab 1]**, as assignment of litigation is not prohibited where there is a pre-existing community of pecuniary interest.

8. The continued interest of Canadian Western Bank as well as the continued 50% shareholdings of the McCrackens provide the necessary pre-existing community of pecuniary interest to facilitate the assignment of the Grand Rapids claim.

9. Based upon the materials filed and the foregoing submissions, the Applicants respectfully request an Order granting the relief sought in the subject application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th day of April, 2018.

MILLER THOMSON LLP

Per: ______________________

Stephanie Wanke
Solicitors for the Applicants

2015 ABCA 150
Alberta Court of Appeal

1773907 Alberta Ltd. v. Davidson

2015 CarswellAlta 752, 2015 ABCA 150, [2015] A.W.L.D. 2112, [2015] A.W.L.D. 2174, [2015] A.W.L.D. 2175, [2016] 1 W.W.R. 694, 253 A.C.W.S. (3d) 93, 25 Alta. L.R. (6th) 333, 600 A.R. 170, 645 W.A.C. 170

1773907 Alberta Ltd., Appellant and Silverado Oilfield Ventures Ltd., Appellant (Plaintiff/Defendant by Counterclaim) and Shelley Davidson, Respondent (Defendant/Plaintiff by Counterclaim) and Richard Davidson, Respondent (Defendant) and John Doe Corporation, Not a Party to the Appeal (Defendant) and Carolyn Parent also known as Carolyn Trenerry, John Doe and ABC Corporation, Not Parties to the Appeal (Third Party Defendants)

Ronald Berger, Brian O'Ferrall JJ.A., Paul Jeffrey J. (ad hoc)

Heard: October 7, 2014
Judgment: May 1, 2015***
Docket: Calgary Appeal 1401-0081-AC

Proceedings: reversing *Silverado Oilfield Ventures Ltd. v. Davidson* (2014), [2014] 6 W.W.R. 295, [2014] A.J. No. 407, 95 Alta. L.R. (5th) 241, 2014 ABQB 218, 2014 CarswellAlta 637, B.E. Romaine J. (Alta. Q.B.)

Counsel: T.R. McDonald, R.L. Martz, for Appellants
M. Lemmens, L.E. Price, for Respondents

Subject: Civil Practice and Procedure; Contracts; Corporate and Commercial; Torts

Related Abridgment Classifications

Civil practice and procedure
III Parties
III.6 Adding or substituting parties
III.6.f Substituting party

Torts
II Champerty and maintenance
II.1 General principles
II.1.a Nature and scope

Torts
II Champerty and maintenance
II.1 General principles
II.1.b Assignment of right of action

Torts
II Champerty and maintenance
II.1 General principles
II.1.a Nature and scope

Torts
II Champerty and maintenance
  II.1 General principles
    II.1.b Assignment of right of action

Headnote

Civil practice and procedure --- Parties — Adding or substituting parties — Substituting party
Plaintiff was employer who alleged that defendant employee and her husband committed fraud against it — Employer brought action against employee and husband, but went into receivership after commencing action — Employer's receiver transferred action to purchaser of employer — Action was stayed by Rules of Court until order was obtained, for purchaser to continue action — Employer brought action to lift stay and to allow purchaser to continue action — Stay was technically lifted, but action was dismissed as abuse of process — Cross-application of both defendants was granted — Employer appealed from this judgment — Appeal allowed — Receiver, in attempting to maintain litigation, was not acting in champerty as found by motion judge — Receiver was allowed to be assigned cause of action, as long as there was legitimate purpose to assignment — Possibility of profit by assignor was not cause to find that there was champerty — In this case, assignment of cause of action was ancillary to property interest being acquired by receiver — As receiver had purchased business of employer, it had legitimate financial interest in action — Receiver had interest in "business, undertaking or assets" of employer which action fell under — Interest of secured creditor bank was not properly taken into account by motions judge — Receiver was acting legitimately to protect bank's interest as well as its own — There was no bad faith on part of receiver.

Torts --- Champerty and maintenance — General principles — Nature and scope
Plaintiff was employer who alleged that defendant employee and her husband committed fraud against it — Employer brought action against employee and husband, but went into receivership after commencing action — Employer's receiver transferred action to purchaser of employer — Action was stayed by Rules of Court until order was obtained, for purchaser to continue action — Employer brought action to lift stay and to allow purchaser to continue action — Stay was technically lifted, but action was dismissed as abuse of process — Cross-application of both defendants was granted — Employer appealed from this judgment — Appeal allowed — Receiver, in attempting to maintain litigation, was not acting in champerty as found by motion judge — Receiver was allowed to be assigned cause of action, as long as there was legitimate purpose to assignment — Possibility of profit by assignor was not cause to find that there was champerty — In this case, assignment of cause of action was ancillary to property interest being acquired by receiver — As receiver had purchased business of employer, it had legitimate financial interest in action — Receiver had interest in "business, undertaking or assets" of employer which action fell under — Interest of secured creditor bank was not properly taken into account by motions judge — Receiver was acting legitimately to protect bank's interest as well as its own — There was no bad faith on part of receiver.

Torts --- Champerty and maintenance — General principles — Assignment of right of action
Plaintiff was employer who alleged that defendant employee and her husband committed fraud against it — Employer brought action against employee and husband, but went into receivership after commencing action — Employer's receiver transferred action to purchaser of employer — Action was stayed by Rules of Court until order was obtained, for purchaser to continue action — Employer brought action to lift stay and to allow purchaser to continue action — Stay was technically lifted, but action was dismissed as abuse of process — Cross-application of both defendants was granted — Employer appealed from this judgment — Appeal allowed — Receiver, in attempting to maintain litigation, was not acting in champerty as found by motion judge — Receiver was allowed to be assigned cause of action, as long as there was legitimate purpose to assignment — Possibility of profit by assignor was not cause to find that there was champerty — In this case, assignment of cause of action was ancillary to property interest being acquired by receiver — As receiver had purchased business of employer, it had legitimate financial interest in action — Receiver had interest in "business, undertaking or assets" of employer which action fell under — Interest of secured creditor bank was not properly taken into account by motions judge — Receiver was acting legitimately to protect bank's interest as well as its own — There was no bad faith on part of receiver.

Table of Authorities

Cases considered:

Fredrikson v. Insurance Corp. of British Columbia (1986), 1986 CarswellBC 131, (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* 3 B.C.L.R. (2d) 145, (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* 28 D.L.R. (4th) 414, (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* 17 C.C.L.I. 194, (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* [1986] 4 W.W.R. 504, [1986] I.L.R. 1-2100 (B.C. C.A.) — followed

Fredrikson v. Insurance Corp. of British Columbia (1988), (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* [1988] 6 W.W.R. 633, (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* 49 D.L.R. (4th) 160, (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* 86 N.R. 48, (sub nom. *Fredrickson v. Insurance Corp. of British Columbia)* 38 C.C.L.I. 161, [1988] I.L.R. 1-2371, [1988] 1 S.C.R. 1089, 1988 CarswellBC 759, 1988 CarswellBC 697 (S.C.C.) — referred to

Hoque, Re (1996), 38 C.B.R. (3d) 133, (sub nom. *Hoque (Bankrupt), Re)* 429 A.P.R. 142, 1996 NSCA 30, (sub nom. *Hoque (Bankrupt), Re)* 148 N.S.R. (2d) 142, 1996 CarswellNS 51 (N.S. C.A.) — considered

Katz, Re (1991), 6 C.B.R. (3d) 211, 1991 CarswellOnt 192 (Ont. Bktcy.) — referred to

Kostiuk, Re (1999), 14 C.B.R. (4th) 90, 20 B.C.T.C. 353, 1999 CarswellBC 2052 (B.C. S.C.) — referred to

Margetts (Next Friend of) v. Timmer Estate (1999), (sub nom. *Margetts v. Timmer)* 244 A.R. 114, (sub nom. *Margetts v. Timmer)* 209 W.A.C. 114, 73 Alta. L.R. (3d) 110, 178 D.L.R. (4th) 577, [2000] 2 W.W.R. 85, 1999 ABCA 268, 1999 CarswellAlta 882, 39 C.P.C. (4th) 146 (Alta. C.A.) — followed

Oasis Merchandising Services Ltd., Re (1996), [1997] 2 W.L.R. 764, [1997] 1 All E.R. 1009, [1998] Ch. 170 (Eng. C.A.) — considered

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — considered

Seear v. Lawson (1880), 15 Ch. D. 426 (Eng. C.A.) — considered

Trendtex Trading Corp. v. Credit Suisse (1979), [1980] 3 All E.R. 721, [1980] Q.B. 629 (Eng. C.A.) — considered

Trendtex Trading Corp. v. Credit Suisse (1981), [1982] A.C. 679, [1981] 3 All E.R. 520 (U.K. H.L.) — referred to

Weltco Properties Ltd. v. Retlaw Group International Inc. (1991), 116 A.R. 198, 1991 CarswellAlta 667 (Alta. Q.B.) — followed

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
s. 30(1)(a) — referred to

s. 243 — referred to

s. 247 — referred to

Champerty, Act respecting, R.S.O. 1897, c. 327
Generally — referred to

Civil Enforcement Act, R.S.A. 2000, c. C-15
s. 1(1)(ll) "property" (v) — considered

s. 87 — considered

APPEAL by employer from judgment reported at *Silverado Oilfield Ventures Ltd. v. Davidson* (2014), 2014 ABQB 218, 2014 CarswellAlta 637, [2014] 6 W.W.R. 295, 95 Alta. L.R. (5th) 241, [2014] A.J. No. 407, 587 A.R. 200 (Alta. Q.B.), striking employer's claim against defendants ex-employee and husband.

The Court:

I. Introduction

1 This is an appeal of an order striking and summarily dismissing an action started by the appellant, Silverado Oilfield Ventures Ltd. (Silverado), but which was assigned to the appellant numbered company (177 Ltd.). The action was struck by a case management judge sitting in chambers because the assignment was found to be tainted by champerty and maintenance (maintenance being the act of assisting a person to bring or maintain an action without the party so assisting having a legitimate interest and champerty being a more egregious form of maintenance where the maintainer, who has no legitimate interest in the litigation, shares or receives all the proceeds of the litigation). We allow the appeal.

2 Silverado's action was against a former employee. Silverado alleges that while employed as the company's Financial Administration Manager, the defendant, Shelley Davidson, defrauded the company of $1.5 million. Silverado sued to recover the funds it says were fraudulently taken from it.

3 However, before Silverado's action was prosecuted to conclusion, Silverado went into receivership at the instance of a creditor bank. A receiver was appointed pursuant to the terms of the bank's security agreement. The assets of Silverado, including the action, were seized by the receiver. The receiver then negotiated a sale of Silverado's assets, including the action, to 177 Ltd. 177 Ltd. is a company owned by the parents of the wife of the former CEO of Silverado. Because the sale of Silverado's assets to 177 Ltd. was made pursuant to a receivership, the sale was subject to court approval. Court approval was granted December 4, 2013 and shortly thereafter notice of the assignment of the action was given to the defendants in the action (Shelley Davidson and her husband, Richard Davidson).

4 Upon being notified of the assignment, the defendants applied for an order striking 177 Ltd.'s claim against them as being vexatious and an abuse of process. The chambers judge granted the defendants' application and struck 177 Ltd.'s claim. She did so on the basis that the assignment of the action from Silverado to 177 Ltd. was tainted by champerty and maintenance. She found that the assignment of the action did not fall into any of the usual exceptions to the prohibition against champerty and maintenance and was made for an "improper motive". The improper motive, according to the chambers judge, was "[the] motive to profit from the litigation with a view to funding 177's business activities".

II. Chambers Judge's Decision

5 In striking the assigned claim, the chambers judge considered two of the exceptions to the rule against champerty and maintenance articulated in *Fredrikson v. Insurance Corp. of British Columbia* (1986), 28 D.L.R. (4th) 414, 3 B.C.L.R. (2d) 145 (B.C. C.A.) [hereinafter Fredrickson], aff'd [1988] 1 S.C.R. 1089 (S.C.C.), the one exception being where the assignee has a property interest to which the cause of action is ancillary and the other being where the assignee has a legitimate commercial or financial interest in the enforcement of the claim.

6 The chambers judge found that the assignment was not ancillary to any property interests being acquired by 177 Ltd. She also found that 177 Ltd. did not have a genuine commercial or financial interest in taking the assignment and enforcing it for its own benefit. The chambers judge also found that 177 Ltd. had no legitimate interest in the outcome of the lawsuit other than to profit from it, which she found to be an improper motive.

7 With respect to her finding that the assignment of Silverado's action against the Defendants to 177 Ltd. did not fall within the "ancillary to a property interest" exception to the rule against champerty and maintenance, the chambers judge, after reviewing the law, gave these reasons at paragraph 38:

> While 177 submits that the assets that were conveyed were related to the cause of action, there is no real connection, other than that 177 has suggested it would like to use any damages it may recover from the litigation in the course of carrying on its business. This was not the purchase of the shares of Silverado, and 177 is not a successor corporation to Silverado. It did not assume Silverado's liabilities to its creditors, its employees or the tax authorities. 177 merely intends to carry on a business of a similar nature using assets purchased from Silverado. It is owned independently and its directors and stakeholders are not the same as those of Silverado.

8 With respect to her finding that 177 Ltd. did not have a genuine commercial or financial interest in taking the assignment and enforcing it for its own benefit, the chambers judge, after reviewing the cases, was of the view that the commercial interest had to pre-exist the assignment and she found that it did not at paragraphs 52 through 54:

> It cannot be said that 177 had a genuine pre-existing commercial interest in the cause of action. 177 did not exist until shortly before the assignment of Silverado's assets. It is not owned by any of the Silverado directors or shareholders and was not a Silverado creditor. 177 is a stranger to the litigation. A valid commercial interest cannot arise from the assignment itself...
>
> Any profits obtained from the litigation would not be shared with any creditors or shareholders of Silverado which has no further interest in the litigation ...
>
> This is a classic example of assignment of a cause of action to a stranger who seeks to make a profit from the litigation, an "officious intermiddler" guilty of the improper maintenance of the litigation.

9 The chambers judge's reasons for finding that the legitimate "commercial interest" exception did not apply seem to be three-fold. Firstly, 177 Ltd.'s commercial or financial interest did not pre-date the assignment. Secondly, neither Silverado nor its creditors would share in the fruits of the litigation. And, thirdly, 177 Ltd. stood to "profit" from the litigation.

10 Having found that the property interest and legitimate commercial interest exceptions did not apply, the chambers judge went on to consider the motives of the alleged maintainer, 177 Ltd. She prefaced her analysis with the observation that there can be no champerty without maintenance and maintenance requires that there be an element of "officious intermeddling", the "stirring up of strife", or other improper motive by the alleged maintainer. With respect to improper motive, the chambers judge had this to say at paragraph 68:

> I have no direct evidence of the motives of 177, other than its declared motive to profit from the litigation with a view to funding 177's business activities. If it has no other motive, then 177 must be considered to have no legitimate interest in the outcome of the lawsuit, and thus to be in the position of an "officious intermeddler".

The chambers judge found no other motive.

III. Appellants' Arguments

11 The appellants argue that the chambers judge erred in a number of respects. The appellants identify 15 grounds of appeal. We do not intend to deal with them all. Some can be grouped and others need not be dealt with in order to decide this appeal.

12 When grouped, the main grounds of appeal are that the chambers judge erred in finding that 177 Ltd. had no legitimate commercial or financial interest in prosecuting the action, that the chambers judge erred in finding that the assigned action was not ancillary to property rights being conveyed to the assignee, and that the chambers judge erred in finding that the assignment of the cause of action was for an improper purpose.

13 The appellants also argue that the chambers judge erred in not engaging in a public policy analysis and in not considering the merits of the action in determining whether the assignment was champertous. The appellants also argue that

by striking the assigned action, the chambers judge permitted an improper collateral attack on the sale approval and vesting order. The appellants also question whether the doctrines of champerty and maintenance have any relevance any more, given the powers of the court to strike vexatious, abusive or oppressive claims, or those lacking merit. Given the bases for our disposition of the appeal, it was not necessary for us to rule on all these grounds of appeal.

IV. Standard of Review

14 The appellants argue that the interpretation of the common law principles of champerty and maintenance and the test for striking a claim for abuse of process involve questions of law and are therefore reviewable for correctness. The respondents argue that a blanket standard of review is not appropriate and that the relevant standard of review should be set out for each issue on appeal But in the end, the respondents appear to be content with the standard of review applicable to the application of legal doctrines to facts, which is the standard of reasonableness (palpable and overriding error required to overturn).

15 This was a decision of a case management judge who had heard many applications in connection with this litigation. Ordinarily, a case management judge should be afforded significant deference given her familiarity with the proceedings. But here the case management judge was not making a case management decision. She gave a final judgment in favour of the defendants summarily striking the plaintiffs' claims.

V. Analysis

A. Assignability of Choses in Action

16 A review of the law governing the assignment of choses in action may be helpful to understanding our disposition of this appeal. Choses in action, as opposed to choses in possession, are personal rights which have not been reduced to possession but which are recoverable by action (lawsuits). Choses in action include the right to recover personal property, the right to recover debts, the right to recover damages in contract or tort or for failure to perform a duty owed.

17 Some choses in action are assignable by statutory prescription. Rights of subrogation contained in insurance statutes are examples of choses in action made assignable in this fashion. Bankruptcy legislation permits the assignment of rights of action which are the property of a bankrupt to a trustee in bankruptcy and the further assignment of such rights of action by the trustee in disposing of the bankrupt's estate. That is, a trustee in bankruptcy can assign a bare cause of action to a creditor of the bankrupt or to a third party in order to realize as fully as possible the assets of the bankrupt for the benefit of creditors. Under the *Alberta Civil Enforcement Act*, RSA 2000, c C-15, a receiver may be authorized to bring proceedings in relation to the debtor's property (section 87) and "property" is defined to include "any cause of action" (section 1(1)(ll)(v)). Wills and estates statutes effect the assignment of choses in action. Upon the death of a party, the deceased's representative may commence or continue actions which the deceased brought or could have brought. They do so for the benefit of the estate's beneficiaries who are typically strangers to the claim.

18 Some choses in action are made assignable by contract. In this case, for example, the appellant, Silverado, in a general security agreement, granted the bank a security interest in "all presently owned and hereafter acquired personal property...of whatsoever nature and kind", including "claims, choses in action and demands of every nature and kind howsoever arising". Upon default, the general security agreement provided that the bank could appoint a receiver to sell or otherwise dispose of this personal property on such terms as the bank considered reasonable.

19 Some choses in action, however, are not assignable. A statute or a contract can prohibit assignment, just as either can sanction an assignment. More importantly, however, assignments tainted by champerty and maintenance have traditionally been prohibited at common law.[1] Neither the common law nor equity permitted what courts have characterized as trafficking or speculating in causes of action.

B. Champerty and Maintenance

20 McBain J outlined the meaning of both champerty and maintenance in *Weltco Properties Ltd. v. Retlaw Group International Inc.* (1991), 116 A.R. 198, 1991 CarswellAlta 667 (Alta. Q.B.). At paragraph 66 he stated:

> Champerty is defined in *Black's Law Dictionary* as:
>
> > A bargain made by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered.
> >
> > 'Maintenance' consists of maintaining, supporting or promoting the litigation of another.
>
> Mr. Cichy in argument quotes *Halsbury's Laws of England*, Fourth Edition Volume 9 at paragraph 400:
>
> > Maintenance may be defined as the giving of assistance or encouragement to one of the parties to litigation by a person who has neither an interest in the litigation nor any other motive recognised by the law as justifying his interference. Champerty is a particular kind of maintenance namely maintenance of an action in consideration of a promise to give the maintainer a share in the proceeds or subject matter of the action.

21 After an extensive review of the case law, Justice McBain set out the specific elements to be proven where champerty or maintenance is alleged, as well as the situations where an assignment will not be overturned. He held, at paragraph 85:

> From the above cases, the following criteria for a champerty/maintenance defence may be extracted:
>
> > 1) Element of officious intermeddling, *Goodman*, supra.
> >
> > 2) No previous commercial connection, *Oseco*, supra.
> >
> > 3) The assignee is speculating on a personal gain from the lawsuit, *Trendtex*.
> >
> > 4) There is a stirring up of strife, *Wiegand*.
> >
> > 5) The assignee initiates or promotes the commencement of a lawsuit.
>
> However, the agreement will not be held void where:
>
> > 1) The assignor and the assignee of the cause of action have a pre-existing community of pecuniary interest, i.e. a common interest; *Oseco*, supra; also *Arpin v. Loclaire*, [1930] 2 D.L.R. 427 (Man. K.B.) as quoted in *Oseco*; see also *Fredrickson v. Insurance Corp. of British Columbia* (1986), 28 D.L.R. (4th) 414 (B.C.C.A.), affm'd. [1988] 1 S.C.R. 1089;
> >
> > 2) There are legitimate business reasons for the transaction, *Oseco*;
> >
> > 3) There is a genuine commercial interest in taking the assignment and enforcing it for his own benefit, *Trendtex*; see also *453416 Ont. Inc. O.B. Cranes and Services et al. v. White* (1984), 42 C.P.C. 209 (Ont. H.C.J.);
> >
> > 4) The assignment is a bone fide business arrangement, *Oseco*; and
> >
> > 5) The assignment is of a property right or interest and the cause of action is ancillary to that interest.

22 One of the cases relied on by Justice McBain was the decision of Justice McLachlin, as she then was, in *Fredrickson*. Shetoo reviewed the authorities and articulated the following test for champerty and maintenance at paragraph 37:

> An assignment of a cause of action for non-personal tort is generally valid if the assignee has a sufficient pre-existing interest in the litigation to negate any taint of champerty or maintenance. In determining if this test is met, the court should look at the totality of the transaction: *Trendtex*, per Lord Roskill at p. 531. A property interest ancillary to the cause of action assigned is sufficient to support an assignment, but not essential. A genuine pre-existing commercial interest will suffice. The term "commercial interest" is used in the sense of financial interest; it need not arise from commercial dealings in the narrow sense. Assignment of a cause of action to a stranger will not be permitted, nor will the court uphold an assignment made for the purpose of obtaining more than what the assignee is legally entitled to.

Finally, in *Margetts (Next Friend of) v. Timmer Estate* (1999), 244 A.R. 114, 178 D.L.R. (4th) 577 (Alta. C.A.), this court made clear that the assignment of a cause of action is not automatically champertous. The court held, at para 12:

> The true question to be determined in the light of the contents of the agreement and the entire transaction is whether the assignment is for a legitimate purpose that does not jeopardize the integrity of the judicial process. There is no policy or other principled reason to automatically conclude that the assignment of every action in tort based on a personal wrong is champertous and therefore non-assignable.

C. Fredrickson v. Insurance Corporation of British Columbia

23 The chambers judge relied on *Fredrickson*, in coming to her decision, and the facts of that case are relevant to the issue before us. In *Fredrickson*, the insured, Fredrickson, lent his car to an 18-year-old girl whom he knew to be intoxicated. Shortly thereafter, the young lady was hit by a train at a level crossing. Her injuries were severe.

24 The Public Trustee obtained a $1.2 million judgment against Fredrickson for his negligence in letting the young lady drive. The policy limits on Fredrickson's motor vehicle insurance policy, $500,000, were paid to the Public Trustee for the benefit of the young lady, leaving $700,000 owing by the insured. However, Fredrickson felt he had a cause of action against his insurer for failing to defend him properly. If successful, Fredrickson claim had the potential to yield substantial damages. So, in return for the young lady's covenant not to execute on the unpaid portion of her judgment, Fredrickson assigned to her his right of action against his insurer.

25 The insurer sought summary dismissal of the claim on the basis that the assignment was tainted by champerty and maintenance.

26 The chambers judge found that no champerty or maintenance existed because the young lady, to whom the insured's action had been assigned, had a genuine commercial interest in taking the assignment. He dismissed the insurer's application for an order striking out the action.

27 The chambers judge's decision was upheld by the British Columbia Court of Appeal and later by the Supreme Court of Canada.

28 Justice McLachlin wrote that the assignment of the insured's cause of action did not have any taint of champerty or maintenance because the assignee, the badly-injured young lady, had a real financial interest in the litigation. What is significant for the case before us is that in *Fredrickson*, the financial interest of the assignee which the Court said was sufficient to negate champerty and maintenance was simply the fact that the assigned litigation represented the young lady's only means of obtaining satisfaction of her judgment against the insured.

29 In giving the Court's judgment, Justice McLachlin assumed that, as a general rule, causes of action in tort were not assignable, but that the general rule was subject to "exceptions". One was where the assignee had a "pre-existing property

