

## Case In Point

### Sexual Assault: When is an Employer Vicariously Liable?

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In a recent decision, [Ivic v. Lakovic](#), the Ontario Court of Appeal dismissed a claim against a taxi company whose driver allegedly sexually assaulted the appellant. The Court found that the alleged acts were only coincidentally connected to the taxi company and the company did not confer any power on the driver over the appellant.

In its decision, the Court set out the principles of vicarious liability and reiterated that:

- most commonly, an employer is found vicariously liable for an employee's acts when: (a) those acts were committed in the course of the employee's employment duties; and (b) they inadvertently result in loss or damage to an innocent third party
- a **"wrong that is only coincidentally linked to the activity of the employer and duties of the employee cannot justify the imposition of vicarious liability on the employer ... the fundamental question is whether the wrongful act is sufficiently related to conduct authorized by the employer to justify the imposition of vicarious liability."** [emphasis added]

In other words, before a finding of vicarious liability can be made against an employer in a sexual assault claim against its employee, there must be a strong connection between what the employer was asking the employee to do and the assault.

In this instance, the Court found the driver's actions were not related to the company's aims and, in fact, the company had rules that sought to prevent any physical contact with customers. The Court concluded that the company did not "materially" increase the risk of the appellant being assaulted by the driver by permitting him to drive the taxi; it agreed with the motion judge that the alleged assault was only "coincidentally linked to the activities" of the company.

This case is yet another reminder to employers that they should have policies in place which govern workplace conduct and which prohibit improper or criminal conduct by employees. It also sets out the context in which employers may, or may not, be found vicariously liable for sexual assault.