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# Accident Benefits Law

Issues in Law You Need To Know

## Statutory Accident Benefits - Access to Justice Issues

*Ontario's auto insurance reforms are causing a lot of discussion – from both a positive and a negative viewpoint. For the most part, the public does not understand what it means to have benefits reduced until such time as they are faced with paying out of their own pocket for medical treatment once the Statutory Accident Benefits are exhausted and treatment is not covered by OHIP.*

Those who are injured in a motor vehicle accident through no fault of their own may be able to fund the treatment through private lenders and claim not only the cost of the treatment, but also the interest paid on borrowing the money.

The case of Bourgoin v. Ouellette et al. – New Brunswick Court of Queen's Bench dealt with this issue. In this case a number of disbursements were being assessed. One in particular was the interest owed on a loan taken out by the Plaintiff from a company called Seahold Investments Inc.

To quote the case: "It remains to determine whether the interest charged by Seahold Investments Inc. constitutes a disbursement which is

refundable to the plaintiff by the defendants, and if so, is a monthly compound interest of 2.4 % reasonable."

Seahold Investments Inc. is a private corporation which provides temporary financing to victims of personal injury who are awaiting insurance claim settlements allowing them, for example, to keep their house, vehicle, and to care for their family.

This type of financing would also apply to legal costs and disbursements in lawsuits pending a settlement. This was the case in this matter. The interest rate charged is 2.4% compounded monthly. This is a very high interest rate compared to regular market rates however it is unlikely that regular financial markets would lend money under these circumstances.

Numerous cases were reviewed in this decision. The Plaintiff's counsel argued that without the assistance of Seahold Investments Inc., his client would not have had



the access to justice to which he was entitled.

Although various arguments were put forward by defense counsel, including that interest charges are not part of the refundable expenses since they come under the costs of a contingent fee agreement between a lawyer and a client, the

judge ruled that this interest was not interest charged by the lawyer to his client, but was in fact interest charged by Seahold.

The final decision was that the interest is claimable. To quote the judge "The only option which seemed to be open to him in order to have access to justice, claim his rights and obtain such a considerable settlement, was to get a loan from a financial institution able to support his allowable disbursements for the duration of the action. Seahold Investments Inc. was the institution that agreed to do it, at a very high interest rate, but also at an elevated risk to itself.

It must be noted that the Bank of Nova Scotia did not want to take on the risk for a lesser amount."

With the recent changes to the Statutory Accident Benefits in

Ontario, many plaintiffs will be faced with having to borrow money for treatment once the \$50,000 cap is exhausted. The new legislation reduces the medical and rehabilitation expense from \$100,000 for noncatastrophic injuries to \$50,000; however, the \$50,000 now includes the cost of assessments.

Today many serious injury cases exceed the \$100,000 cap without including the cost of assessments. In the case of serious injuries, which do not meet the catastrophic designation, the \$50,000 will be exhausted long before settlement is achieved.

The plaintiffs will have to pay for treatment out of their own pockets, which in most cases is not possible. They will therefore have to access private lending institutions in Ontario such as BridgePoint

Financial Services and Lexfund who will fund this treatment. In addition, when obtaining treatment outside the Statutory Accident Benefits legislation the health care providers will not be restricted by the hourly rates of the SABs and can charge full market rate.

So, in applying the Access to Justice reasoning in the Bourgoin case, the cost of the treatment and the interest charged should be claimable from the defendant. This will undoubtedly increase the settlements in tort actions. It remains to be seen if Ontario will follow this discussion.

*If you have questions about personal injury or Access to Justice, please contact one of our personal injury lawyers at (613) 728-8057. You can also contact Donna Robinson directly at (613) 288-3215 or by email at [drobinson@tslawyers.ca](mailto:drobinson@tslawyers.ca).*



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#### PRACTICE SUMMARY:

Donna Robinson has over 30 years experience in the Insurance and Legal fields. She began her career as a claims examiner for The Co-operators and then worked as a litigation law clerk before entering into the independent adjusting field. As a licensed independent adjuster she worked handling all lines of claims.

Donna is a Paralegal and Insurance Claims Consultant in the Personal Injury Litigation Group of Tierney Stauffer LLP. She is hands-on with her clients and epitomizes the firm's creed that we focus on solutions. She works closely with insurers, medical and health practitioners and is often consulted by other law firms in Ottawa on SABs issues and assists other firms in resolving conflicts with the insurers. She is recognized in Ottawa as the expert in the Quebec/Ontario automobile legislation and has given expert witness testimonies in the Ontario courts. Donna has her CIP designation through the Insurance Institute of Canada and has also completed her accreditation as a mediator through the University of Windsor.