
2016

The License Appeal Tribunal - The First Six Months

Broadcast Nov 10, 2016

Speakers: Lisa Armstrong, Samis + Company & Laura Emmett, Lerner LLP

1.25 hours CPD

Changes to the Statutory Accident Benefits Dispute Resolution

CDL committee members Lisa Armstrong and Laura Emmett discuss early experiences with AABS and the LAT as they provide their insight into the new regime.

- What does the system look like?
- What trends are emerging?
- What are the cases saying?

In the Course of Employment: When a Plaintiff should actually be a WSIB Claimant

Broadcast Aug 25, 2016

Speaker: Karen E. Jacques, Jacques Law

Chair: Lisa Marie Buccella, Dutton Brock LLP

1 hour CPD

Although some injuries will be clearly connected to a person's employment, there is a wide range of circumstances that are not as obvious. Carefully considering if a Plaintiff was actually "In the Course of Employment" and should be estopped from civil action, is a valuable step in the Insurance Defence Litigator's review and analysis. The Workplace Safety and Insurance Appeals Tribunal (WSIAT) has the exclusive authority to determine if an injury occurred in the Course of Employment. Karen E. Jacques is the Lead Counsel at Jacques Law, a Civil Litigation and Dispute Resolution firm in Kincardine, Ontario.

Public Disclosure of Private Facts

Broadcast July 29, 2016

Speaker: Chris Madill, Stewart McKelvey

Chair: Alex Sharpe, Lerner LLP

1 hour CPD

The frequency and severity of electronic privacy breaches continue to rise and the common law is being called upon to protect victims' rights.

In *Jane Doe 464533 v ND* (2016 ONSC 541), the plaintiff's ex-boyfriend uploaded an intimate video of her to the internet without her knowledge or consent. The plaintiff sued the ex-boyfriend. She plead (amongst other causes of action) breach of privacy.

Justice Stinson cited the seminal decision from the Court of Appeal, *Jones v Tsige* (2012 ONCA 32) and its reliance upon the four privacy torts set out in the American Restatement (Second) of Torts. His Honour then held that the tort of public disclosure of private facts was most applicable to the case at bar and that the cause of action was made out on the facts.

Key topics to be discussed during this audioconference include:

- How the analysis behind *Jones v Tsige* and *Jane Doe 464533 v ND* will guide the development of common law privacy torts
- The types and quantum of damages available and how the Supreme Court of British Columbia considered and restricted the scope of *Jane Doe 464533 v ND*
- Common issues posed by privacy torts (e.g. is there coverage under traditional insurance policies?)

The LAT is Coming!

Broadcast Feb 29, 2016

Speaker: Philippa Samworth, Dutton Brock LLP

Chair Sonia Fabiani, Lerners LLP

1.25 hours CPD

On February 29, 2016, join us on a CDL audioconference on the upcoming changes to the statutory accident benefits dispute resolution. Key topics to be discussed include:

- Changes to the Insurance Act and the Statutory Accident Benefits Schedule
- The License Appeals Tribunal (LAT) and new processes
- The new LAT Rules of Practice and Procedure
- The new catastrophic definition
- Other Policy Changes

For anyone with an interest in accident benefits dispute resolution, this is one you do not want to miss!

2015

Cirillo vs Rizzo (2015) ONSC 2440 : Calculation of prejudgment interest pursuant to Section 258.3 of the Insurance Act

Broadcast Aug 12, 2015

Speakers: Karim Hirani & David Zuber, Zuber & Company LLP

.75 hours CPD

In *Cirillo v. Rizzo*, The Honourable Mr. Justice MacKenzie held that the amendment to the calculation of pre-judgment interest pursuant to section 258.3(8.1) of the Insurance Act applies retrospectively. During this audioconference, the analysis behind Justice MacKenzie's decision will be discussed in more detail as will be the applicable pre-judgment interest rate for General Damages arising out of motor vehicle accidents.

Scarlett v Belair Insurance (2015) ONSC 3635: Clarifying the Minor Injury Guideline (MIG) and Raising New Issues

Broadcast July 14, 2015

Speaker: Philippa Samworth, Dutton Brock LLP

Chair: Daniel Strigberger, Samis + Company

1 hour CPD

On June 5, 2015 the Divisional Court of the Superior Court of Justice released the highly anticipated decision of *Scarlett v. Belair Insurance*, which fundamentally clarifies the intention of the Minor Injury Guideline, and how it is to be incorporated by statute or regulation, such as the *Statutory Accident Benefits Schedule*.

The Divisional Court considered the judicial review, commenced by the insured, of the decision of Director's Delegate Evan requesting to set aside the Order of Director's Delegate and to reinstate the order made by Arbitrator Wilson which determined that the insured's injuries fell outside of the MIG. Ultimately, the Divisional Court held that the decision of the Director's Delegate made no error in his reasoning to reverse the Order made by Arbitrator Wilson particularly since the insurer was denied procedural fairness in the first instance.

Philippa Samworth represented Belair Insurance in the appeal to the Divisional Court. The program will review the significance of this landmark decision and the impact it will have on the application of FSCO Guidelines, particularly with respect to the amendment in 2013 to section 268.3 of the *Insurance Act*, as amended.

Iannarella v Corbett 2015 ONCA 110 : The Onus of Liability

Broadcast June 22, 2015

Speaker: David Zuber, Zuber & Company LLP

Chair: Greg Heckel, Samis + Company

1 hour CPD

In *Iannarella v. Corbett*, the Ontario Court of Appeal has weighed in on a number of issues, from shifting onuses in rear end motor vehicle collisions to the pitfalls of using portions of medical reports in the cross-examination of lay witnesses. At its heart, however, the Court of Appeal has again considered the use of surveillance evidence in motor vehicle collision cases. The principles discussed by the Court generally touch on issues of privilege, disclosure, the prerequisites to surveillance being used at trial, the manner in which such evidence may be led, and the role of the trial judge in safeguarding fairness in the proceedings.

Westerhof v. Gee Estate & Moore v. Getahun: Expert Reports

Broadcast April 9, 2015

Speakers: John A. Olah, Beard Winter LLP and Stephen Libin, Dutton Brock LLP

Chair: Jack M. Blackier, FCA, Cox & Palmer

1 hour CPD

On March 26th, 2015 the Court of Appeal for Ontario released its decision in *Westerhof v Gee Estate*. The appellate decision considered whether parties calling treating practitioners at trial to provide opinions on causation, diagnosis and prognosis are required to serve a written report setting out their opinions, as would be expected of "litigation experts". The case overturned the Divisional Court and

gave important guidance on rule 53.03 as to both treating doctors and 3rd party doctors' opinions.

The Westerhof decision follows closely on the Court of Appeal's decision in Moore v Getahun. The much anticipated decision specifically addressed comments made by the trial judge regarding the extent to which communication between counsel and experts is permitted.

John Olah and Stephen Libin, who represented CDL as intervenors at the Court of Appeal, will review the significance of this important decision to your defence practice.

Fordham v. Dutton-Dunwich 2014 ONCA 891 (C.A.): Municipal Liability

Broadcast Jan 29, 2015

Speaker: Jennifer Hunter, Lerner's LLP

Chair: Mouna Hanna, Reissler Franklin LLP

.75 hours CPD

The Court of Appeal held that there is no duty on the part of a municipality to keep its roads safe for those who drive negligently. It also rejected an argument that there is a different standard for rural and urban drivers. This will be a key decision for counsel defending municipalities against allegations of non-repair of a roadway. Jennifer Hunter of Lerner's LLP in London will review the impact of this decision.