

**CANADIAN
DEFENCE
LAWYERS**

March 8, 2021

Email: ahsc@ontario.ca
Ministry of Finance
95 Grosvenor Street
Toronto, Ontario M7A 1Y8

To The Honourable Minister of Finance:

Re: Request to Restore the OIC/FSCO Decisions Database

Pre-amble

Canadian Defence Lawyers is a national organization representing the interests of civil defence lawyers across Canada. A large portion of our membership is made up of members in Ontario and many of those practice in the area of Statutory Accident Benefits.

In June 2020, the Automobile Insurance Dispute Resolution Services (“DRS”), as operated by the Financial Services Commission of Ontario (“FSCO”), ceased operations. At the time, this had minimal impact on lawyers practising in the area of Statutory Accident Benefits as disputes in this area have been under the jurisdiction of the Ontario Licence Appeal Tribunal (“LAT”) since April 2016.

However, with the decision earlier this year to remove public access to the Decisions Database of the DRS, previously housed on the FSCO website, litigants, our members, lawyers for injured persons and the public, have lost access to a valuable practice tool – the searchable database of FSCO/OIC decisions.

Having access to these decisions in a searchable format is a benefit to all litigants and practitioners in this area and we respectfully ask that either the DRS Decisions Database be restored as it was or be maintained elsewhere with access provided free to all.

Value of the DRS Decisions Database and Implications of Its Removal

The Decisions in the Database constitute a library of precedents and are an invaluable resource. These precedents assist litigants, insurers, insureds, lawyers and triers of law and fact when trying to apply the law to specific fact situations. Accident benefits disputes have long preceded the Licence Appeal Tribunal’s jurisdiction over the adjudication of such disputes on April 1, 2016.

Our Common Law system is based on precedent. What has been decided before has always guided what has yet to be decided. If the sentiment is that OIC or FSCO decisions are “stale-dated”, that is simply not true. In fact, such decisions, although not binding, are considered and have been referenced by the LAT. The frequency at which these cases are cited by in LAT decisions, even though they are technically not binding, is evidence that they are both informative and persuasive.

Despite the changes to the no-fault benefits regime and the evolution of the Statutory Accident Benefits in Ontario, historical decisions continue to hold precedential value. In practice, there are often discrete fact patterns or legal arguments that are either novel or rare requiring lawyers to refer to “old” decisions for guidance.

CDL firmly believes that Public access to all judicial decisions is valuable in maintaining proper Access to Justice as well as in the decision-making process and to demonstrate transparency. As it stands, the only opportunity to search and review the FSCO and OIC decisions requires a paid subscription to a paid service such as Quicklaw. Keeping this Database will allow unrepresented litigants to have a resource to consult. This is particularly important when a party cannot afford a lawyer of their own. In order to follow the evolution of Statutory Accident Benefits law, all written decisions need to be available to all interested parties.

To suggest that decisions continue to be accessible because anyone can request a copy of a specific decision from the Ministry of Finance misses the point. First, time can be of the essence. Having to request a case/decision may interfere with the timing of decisions on disputes. Second, the party requesting the case/decision would have to know specific details, including the name of the specific decision in order to make that request. Generally, someone, especially a lawyer, who already has enough information to request a specific decision likely has a copy of the decision. Self-represented litigants would not. And further, having to request a decision leading up to hearings would not help lawyers or self-represented parties who are conducting research or simply trying to manage their case.

It is our submission that the public benefit of maintaining free, simple and searchable access to the FSCO/OIC decisions outweighs the cost of finding a new accessible location through a website maintained by the Ministry of Finance. It is a needed resource and important to the issue of Access to Justice for all litigants.

Requested Action

Based on the foregoing, the Canadian Defence Lawyers request that the DRS decisions database, which we understand is presently archived, once again be publicly accessible through the Ministry of Finance.

This is all respectfully submitted on behalf of the Canadian Defence Lawyers and its membership.



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