

## **IT'S THE LAW**

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### **ACCESS TO JUSTICE**

Ontario's proposed auto insurance reforms will no doubt cause a lot of discussion both positive and negative. For the most part the public will not understand what it means to have benefits reduced until such time as they find themselves faced with paying out of their own pocket for medical treatment when the Statutory Accident Benefits are exhausted and treatment is not covered by OHIP.

For those who find themselves injured in a motor vehicle accident through no fault of their own they will be able to fund the treatment through private lenders and claim not only the cost of the treatment but 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, their vehicle, and to continue caring 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 that he is entitled to.

Although various arguments were put forward by defense counsel including that they 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 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 which 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 proposed 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 proposal reduces the medical and rehabilitation expense from the present \$100,000 for non-catastrophic injuries to \$50,000 however the \$50,000 now includes the cost of assessments. Presently many serious injury cases exceed the \$100,000 cap without including the cost of assessments. In 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.

Thus 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.