

Bad Faith and Statutory Accident Benefits

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In *Stegenga v. Economical Mutual Insurance Company*, the plaintiff brought a court action seeking damages related to the administration of her accident benefits claim based on alleged bad faith, negligence and fraud on the part of her insurer, Economical.

The defendant brought a Rule 21 motion to strike the plaintiff's statement of claim, arguing the claim was barred by s.280 of the *Insurance Act*, which provides that disputes "in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled" be brought before the Licence Appeal Tribunal ("LAT").

The plaintiff argued that although the legislation prevented her from suing for accident benefits, it did not prevent her independent claims for bad faith in the handling of her accident benefits claim.

The question before the Court was thus whether a dispute "in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled" includes a claim stemming from the insurer's administration of accident benefits fraudulently, negligently or in bad faith.

In interpreting s.280, the Court noted that the phrase "in respect of" is a very broad expression, intended to convey "some connection between two related subject-matters". It was also noted that the legislation's objective of reducing the cost of litigation would be defeated if the exclusive jurisdiction of the LAT could be defeated by a clever pleading.

The Judge concluded that "there is no reason to doubt that the legislature, in enacting the present s. 280 of the *Insurance Act*, intended to deprive a claimant of resort to the court at first instance whenever the claim is based on denial of accident benefits, no matter how the denial is characterized in legal terms."

As such, the statement of claim was struck and it was held that the LAT had exclusive jurisdiction to decide the claim at first instance.

This decision was appealed to the Court of Appeal and the appeal was dismissed. In its decision released July 19, 2019 ([2019 ONCA 615](#)), the Court of Appeal agreed with the Judge's reasoning and stated:

[22] Neither the legal characterization of the cause of action asserted against the insurer nor the relief claimed determines whether a claim falls within the scope of the dispute resolution provisions. If the dispute relates to the insurer's compliance with obligations to the insured concerning SABs, the timeliness of performance of those obligations and/or the manner in which they were administered, it falls within the broad reach of the dispute resolution provisions, and within the jurisdiction of the LAT. The prohibition on court proceedings will apply.

[23] In this case, these conclusions apply to bar Ms. Stegenga's action.

The Court of Appeal has therefore confirmed that there can be no stand-alone court action seeking bad faith damages arising from the handling of an accident benefits claim.

The LAT lacks jurisdiction to award consequential or punitive damages. However, if it finds that an insurer has unreasonably withheld or delayed the payment of benefits, the LAT can make a special award equivalent to a maximum of 50% of the benefits to which the insured is entitled at the time of the award, plus interest at a higher rate (2% per month, compounded monthly).