

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For decisions released the week of May 19-23, 2008

Complete inability to carry on a normal life – rewarding pre-collision interests given greater weight than day to day activities

Wawanesa Mutual Insurance Company v. Mole, Appeal P07-00010, March 10, 2008 – Director’s Delegate Evans

MVC December 4, 2001. Insured suffered a bump on her head and soft tissue neck, back and knee injuries. Arbitrator held she was entitled to non-earner benefits, the cost of Paxil and the cost of a medical examination. Arbitrator focused on insured’s psychological condition because she alleged that the collision exacerbated her longstanding pre-existing depression and anxiety. Insurer appealed.

The appeal was dismissed. The arbitrator found that Ms. Mole’s normal life before the collision consisted of doing the majority of the housework, sewing, reading, watching television or listening to radio, light gardening, shopping, taking walks, socializing with friends and family, babysitting grandchildren and attending church. Post-collision she was far more depressed and anxious, took shorter walks, gave up babysitting her grandchildren, reading, watching television or listening to radio. Her husband took up the housekeeping role. Arbitrator followed *Walker v. Ritchie*, [2003] CanLII 17106 (Ont. S.C.J.)¹ which attached greater weight to the main activities in which a claimant engaged before the collision rather than a shopping list of activities. Director’s Delegate held the arbitrator made a finding based on facts and there was no reason to interfere with the decision.

Implications:

It is important to identify which activities and interests were most significant to an insured prior to the collision and to determine to what extent they have been compromised by the collision. An insured may retain the ability to carry on many day-to-day tasks but still suffer a complete inability to carry on a normal life.

Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>. Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.

¹ Upheld on appeal, 2005 CanLII 13776 (Ont. C.A.)