



Ontario Trial Lawyers Update

Serving OTLA members and advocating for access to justice for all Ontarians.



CASE SUMMARIES

May 12, 2014

Downing v. Reynolds, 2014 ONSC 2520 (CanLII)

The plaintiff brought an action on behalf of herself and as litigation guardian for her infant daughter for injuries sustained from a motor vehicle collision. In 2010, the parties entered into a settlement for \$700,000 all-inclusive with a signed full and final release. The defendant forwarded the \$700,000 settlement to plaintiff counsel to be held in trust pending court approval. However, plaintiff counsel never proceeded with judicial approval of the infant settlement and no judgment was ever obtained.

Furthermore, the funds were disbursed by plaintiff counsel in its entirety save for \$25,000. The plaintiff, with new counsel, brought this motion to set aside the 2010 settlement on the basis that her daughter sustained catastrophic impairments as a result of witnessing the plaintiff's collision, or to sever the infant settlement from the global settlement of \$700,000. The defendant opposed the motion seeking an Order that the \$700,000 settlement be approved, or an Order that the entire settlement fund be returned to the defendant. Mulligan J. noted that nothing in the settlement correspondence provided a breakdown of the allocation of funds between the plaintiff and her infant daughter. Mulligan J. further noted that Rule 7.08 requires that an affidavit of the litigation guardian, as well as an affidavit of the lawyer acting for the litigation guardian,

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UPCOMING EVENTS

**OTLA Spring Conference
Precedents and Practice:
Strategies for Success
May 29 & 30, 2014**

Chairs: Robert Munroe,
Laura Hillyer, Cathy Wilde
& Kristian Bonn

Location Change:

Metro Toronto Convention

supporting the settlement must be filed before an approval can be considered. As the former plaintiff counsel failed to do so, the defendant's request for approval of the settlement must fail. Mulligan J. also declined to sever the infant settlement from the global settlement due to the lack of apportionment information. Because former counsel is not a party to these proceedings, Mulligan J. declined to order that the entire \$700,000 settlement be returned to the defendant. Given the circumstances, Mulligan J. held that the appropriate remedy is to set aside the entire all-inclusive \$700,000 settlement. [Read more on CanLII.](#)

Kassburg v. Sun Life Assurance Company of Canada, 2014 ONSC 1523

The Plaintiff was insured under a group policy of insurance issued by the Defendant. On May 1, 2008, she submitted a claim for long-term disability benefits. The Defendant advised her by letter dated December 4, 2008 that her claim had been declined, and set out steps for appeal. After corresponding with the insurer through various levels of appeal, the final appeal ended on February 24, 2011 when the Defendant sent the Plaintiff a letter advising that her claim remained declined. Her action was commenced on February 21, 2012. Because the contract provided that no legal action may be brought more than one year after the end of "the time period in which proof of the claim is required," the Defendant argued that the limitation period expired on December 10, 2009. In the alternative, it argued that the two year limitation period under the Limitations Act, 2002 ("Act") expired on December 4, 2010. Ellies J. distinguished the limitation period provisions in this group insurance policy and contract from those in past cases, finding them to be confusing and ambiguous because they reference different terms that would trigger the limitation. As a result of the ambiguity, Ellies J. found that the insurer did not validly contract out of the statutory limitation period in the Act. For the same reasons, as well as the unclear letters from the Defendant in denying the claim, Ellies J. also found that the limitation period did not start to run until February 4, 2011. Ellies J. declared that the Plaintiff's action was commenced within the applicable limitation period. [Read more on CanLII.](#)

Guo v. State Farm Mutual Insurance Company, A12-005562, March 26, 2014

The applicant was involved in a motor vehicle collision on August 18, 2011. She is a citizen of the Republic of China

Centre North Building,
Level 100, 255 Front Street
West, Toronto

[Download the conference brochure.](#)

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OTLA Fall Conference Building Blocks of Practice Excellence: A New Look Through Old Windows

October 20 & 21, 2014

Chairs: Bill Elkin, Ronald Bohm, Claire Wilkinson & Maia Bent

Location Change:

Metro Toronto Convention
Centre North Building,
Level 100, 255 Front Street
West, Toronto

Registration information to come.

[More events >](#)

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OTHER NEWS

Daily Court Lists Online

The Superior Court of Justice and Ontario Court of Justice now publishes daily court lists online at www.ontariocourtdates.ca.

The daily court lists include the case name, time, room number and reason for the court appearance. This information is updated

and came to Canada for a visit with her two daughters and husband in April 2010. Her husband returned to China in late 2010. The applicant had purchased a ticket back to China with a scheduled departure date of September 26, 2011, but remained in Canada to recover from her injuries. Neither of her two daughters had purchased airfare to China at any time in 2011, but testified that they intended to return in late 2011. Arbitrator James Robinson accepted that the applicant received attendant care services from her daughters. The main issue was whether her daughters sustained an "economic loss" in providing that care. At the time of the collision, the three were living in a short-term rental apartment scheduled to terminate in September 2011. As a result of the applicant's injuries, her two daughters have had to rent living space to care for the applicant and pay rent and all household expenses. These expenses form the basis of their claim of economic loss. The respondent argued that, as the applicant's husband was a "well-to-do businessman", the proximate cause of the economic loss suffered was the failure of their wealthy father to provide financial support to the applicant. Arbitrator Robinson stated that the test set forth "does not remit us to an inquiry about whether an economic loss could have been prevented. We are only authorized to determine whether or not it in fact occurred." Arbitrator Robinson found that an economic loss did in fact occur and that the applicant is entitled to be paid for attendant care.

*Summaries provided by **Nga Dang**, a lawyer practising with Singer Kwinter Personal Injury Lawyers in Toronto, Ont.*

Know of a case you think should be included here? Please submit it by email, along with a link to the decision on CanLII if appropriate, to Maria McDonald at mmcdonald@otla.com.

OTLA MEMBER NEWS

**OTLA Spring
Conference, May 29 &
30, 2014**



If you haven't already registered for **OTLA's Spring Conference**, you can do so online by going to

each day at 4:30 p.m., when the next day's information is posted. Weekend and statutory holiday court lists are not published on this website.

[the OTLA website.](#)

Location: This year, the conference is taking place in the **North Building, level 100**, of the Metro Toronto Convention Centre. A map of this new location will be included in the conference materials download a week prior so you'll be able to find your way around easily. OTLA staff will be on hand to help as well. You can find [directions to the North Building here](#).

Date and Time: The conference runs from **12:30 pm to 5:00 pm on Thursday, May 29** and **8:30 am to 4:15 pm on Friday, May 30**.

OTLA Annual General Meeting May 30, 2014

Please join the President and Board of Directors of OTLA at OTLA's Annual General Meeting to be held at the Spring Conference on **Friday, May 30, 2014, 8:00am**, at the Metro Toronto Convention Centre, Room 107, North Building, Level 100.

NEW OTLA MEMBERS

Welcome to OTLA's newest members!

Shikha Malhotra, Toronto
Tina Tarullo, Barrie
John Watson, London
Anna Berger, London
Lily Zhang, Toronto
Nazanin Eisazadeh, Toronto
Earl Levy, Toronto



McKellar STRUCTURED SETTLEMENTS

The Ontario Trial Lawyers Update weekly e-newsletter is brought to you by [McKellar Structured Settlements](#).

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Published by Ontario Trial Lawyers Association

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