

OTLA Ontario Trial Lawyers
Association

Ontario Trial Lawyers Update

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



CASE SUMMARIES

September 2, 2014

Kisel v. Intact Insurance Company, 2014 ONSC 4787

In two actions, Intact brings motions to have the noting in default and a default judgment against it set aside, and also motions for summary judgment to dismiss the Plaintiffs' actions. All motions were dismissed. Recognizing that judges tend to be tolerant in exercising their discretion to set aside the noting of a party in default and default judgments because the administration of justice is best served when cases are decided on the merits rather than a technical breach of the Rules, Perell J. held that the Court should not be so tolerant in the circumstances of this case. The elderly Plaintiffs are 75 and 87 years old. Both were involved in motor vehicle accidents and were entitled to claim accident benefits from Intact. The Plaintiffs received treatment from Assessment Direct and Osler Rehabilitation Centre, both of whom were known for engaging in unfair or deceptive trade practices. Intact took issue with all treatment plans submitted by these service providers. The parties reached a settlement that included Hold Harmless Agreements, which provided that Intact would hold the Plaintiffs harmless and indemnify them from any claims brought by the service providers and that the Plaintiffs agree to cooperate fully with Intact in giving evidence to assist Intact. Assessment Direct subsequently sought

IN THIS ISSUE

CASE SUMMARIES

- *Kisel v. Intact Insurance Company*

2014 OTLA AWARDS

NEW OTLA MEMBERS

UPCOMING EVENTS

OTLA Webinar

Personal Injury and Bankruptcy: What to do When a Party is Bankrupt

Tues., September 9, 2014

Presenters:

Jeffrey Shinehoft

Sanjeev Mitra

Kaitlyn MacDonell

[Register today!](#)

OTLA Webinar

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payment from the Plaintiffs and Intact was immediately notified. There was disagreement about the interpretation of the Hold Harmless Agreements. The Plaintiffs commenced actions against Intact and pursued default proceedings when defences were not delivered on time.

Perell J. summarized the factors to consider:

- 1) whether the motion was brought promptly;
- 2) whether there is plausible excuse or explanation for the defendant's default in complying with the Rules;
- 3) the competing potential prejudice to the parties of granting or refusing to set aside the default judgment; and
- 4) the effect of any order on the overall integrity of the administration of justice.

Perell J. concluded that Intact brought its motions promptly, has an arguable defence and is "just barely close enough" about the overall integrity to the administration of justice factor. However, Perell J. found that Intact had fair warning that the Plaintiffs were expecting strict compliance with the Rules and that the Plaintiffs did not agree with Intact's interpretation of the Hold Harmless Agreement. Despite this, Intact continued to debate the interpretation of the Hold Harmless Agreements through correspondence rather than file Notices of Intent to Defend and Statements of Defence. Perell J. found that Intact's real foe is not against the Plaintiffs but against the service providers, and that it would have suffered no prejudice by delivering the Defence. Perell J. noted that even if the noting in default and default judgment are not set aside, Intact still has its actions against the service providers. Perell J. found that the elderly Plaintiffs are far more prejudiced by the Court granting Intact an indulgence than Intact would be prejudiced by the Court refusing to set aside the noting of default and default judgment. Perell J. also dismissed the summary judgment motions for inappropriateness. [See the full case on CanLII](#)

*Summaries provided by **Nga Dang**, a personal injury lawyer practising with Singer Kwinter in Toronto, Ontario.*

Know of a case that should be included here? Please submit it along with a link to the decision to:

Will Campbell, OTLA Digital Media Coordinator

Law and Access to Justice Co-exist?

Thurs., Sept. 11, 2014

Presenters:

Steven Kenney

Kathy Chittley-Young

Allen Wynperle

[Register today!](#)

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

Monday, Oct. 20

(12:30 pm - 5:00 pm)

- Tuesday, Oct. 21

(8:30 am - 4:15 pm)

Chairs:

Bill Elkin, Ron Bohm,

Claire Wilkinson, Maia

Bent

Location:

Metro Toronto

Convention Centre

North Building, Level 100

255 Front Street West

Toronto

[Register today!](#)

A Celebration of the Personal Injury Bar Dinner

Honouring Timothy P.

Boland and Sheldon A.

Gilbert, Q.C.

Fri., November 14, 2014,

6:00 p.m.

Location:

The Ritz-Carlton Hotel

181 Wellington St. West,

Toronto

[Download the registration form.](#)

[More events >](#)

WCampbell@otla.com.

2014 OTLA Awards: Call for Nominations

Nominations are now open for the 2014 OTLA Awards, which will be presented at the Fall Conference, to be held October 20 & 21, 2014, at the Metro Toronto Convention Centre. Nominations are due by **12 noon Friday, September 12, 2014** for the following awards:

- H. Bruce T. Hillyer Award
- John A. McLeish Award
- Dean Edgell Award
- Distinguished Service Award
- Outstanding Young Lawyer Award
- Women's Caucus Award

[Nominate an OTLA Lawyer member for an award today!](#)

You can also nominate an OTLA Law Clerk member for the Outstanding Law Clerk award.

[Nominate an OTLA Law Clerk member for the Outstanding Law Clerk award today!](#)

If you have any questions about the awards or the nomination process, please contact Sarah Sinasac at ssinasac@otla.com or 905-639-6852.

Welcome to our New Members!

Welcome to the newest OTLA members!

Daniel Belena, *Ajax*
Taheratul Haque, *Woodbridge*
Ellina Malakanova, *Toronto*
Gordon Akilie, *St. Catharines*



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