



Navigating the LAT Regime – Traps for unfamiliar lawyers

Even when a case falls into an area of law in which a lawyer is experienced, a new or unfamiliar administrative regime can present risks for lawyers not prepared for the particular statutory framework. Importantly, missing key details and requirements can lead to malpractice claims from inadequate investigation or communication failures with clients.

The following example involves Ontario statutory accident benefits (“SABs”), now under the jurisdiction of the Licence Appeal Tribunal (“LAT”). It provides cogent examples of errors that could happen to any lawyer operating in an unfamiliar statutory regime.

Don't skip the details

One case¹ shows why familiarizing oneself with the specific evidentiary and procedural requirements of the LAT is so important.² In this case, the applicant was injured in a motor vehicle accident on December 13, 2014. He received a non-earner benefit from Aviva Insurance under the Statutory Accident Benefit Schedule. Aviva ultimately stopped paying that benefit in May of 2016 on the basis that the applicant did not suffer a complete inability to carry on a normal life as a result of the accident. The applicant appealed Aviva's benefits stoppage to the LAT.

The LAT adjudicator dismissed the applicant's claim. In reaching his decision, the adjudicator commented that he considered the evidence in three inter-related parts:

1. Life before the accident;
2. The impairment sustained as a result of the accident;
3. Life after the accident.

The applicant was 28 years old at the time of the motor vehicle accident and was completing a program at Centennial College. He lived with his mother. He had three

children, all of whom did not live with him. The applicant's priorities prior to the accident were his children, playing sports, and pursuing his studies. The applicant swore in an affidavit that his daily activities prior to the accident included:

- Housekeeping and home maintenance;
- Care for his three children;
- Sports (basketball, soccer and weight training);
- Attending college;
- Grocery shopping;
- Volunteer work; and
- Social outings, such as movies and parties.

In his written reasons for dismissing the application, the adjudicator cited a failure on the part of the applicant to provide sufficient evidence and detail as to the various pre-accident activities alleged to be impaired. With respect to time commitments, the applicant “did not provide information about how much time each of [the pre-accident] activities occupied during a typical day, week or month prior to the accident.” The adjudicator drew specific attention to the lack of details on how much time the applicant spent pre-accident on childcare activities like “toileting, grooming, bathing, spending time with the children and taking them to outings.” The adjudicator stressed that the amount of time invested in these activities could only be partially inferred, and this

was inadequate for the purposes of assessing whether the applicant was now prevented from engaging in substantially all of the pre-accident activities in which he ordinarily engaged.³

Without information and evidence as to the amount of time spent on specific activities, the adjudicator was unable to determine how much less time he was able to dedicate to them after the accident. The primary takeaway from this case is that lawyers should be careful to conduct adequate investigation and provide sufficient information and evidence to the tribunal with respect to their client's pre-accident activities in order to substantiate their claims at the LAT. One way this can be done is by collecting detailed attestations from family members and friends as to the applicant's participation in pre-accident activities, such as childcare or hobbies.

The adjudicator in this case also commented on certain procedural errors made by counsel for the parties, which is a reminder that lawyers must keep in mind all the procedural requirements and rules of the LAT.

Hopefully, all lawyers will take specific note of the requirements and rules of the LAT when preparing for future applications. Doing so may help counsel avoid criticism, but, much more importantly, will ensure their client's application is presented in the most effective manner. ■

Yvonne A. Diedrick is Claims Counsel at LAWPRO

¹ 2017 CanLII 46352 [Aviva]

² This case and other important accident benefit cases were reviewed by Mary Nicole Corriero as part of the Osgoode Hall Law School's Professional Development Program, “Accident Benefits 2018: What's New, What's Important,” attended by the author.

³ See Aviva at paras. 13, 17.