

Accident Benefits:

First Award for Costs by the LAT due to “Unreasonable” Conduct - *B.F. v. Wawanesa Mutual Insurance Company* (2017), 2017 CanLII 9821 (Ont. LAT)

On January 30, 2017, the License Appeal Tribunal released the first ever decision awarding costs. Madame Adjudicator Lester ordered that the insurer pay costs of \$250.00 to the applicant. The applicant originally requested for costs in the amount of \$1,000.00. Madame Adjudicator found that the amount was not proportional to the specific behaviour, but “ought to be set high enough to discourage the conduct from occurring again.”

An order for productions, on consent of both parties, was issued at the case conference requiring that all parties exchange documents by October 25, 2016. The insurer did not produce any documents to the applicant, and the applicant’s counsel notified the LAT. The LAT wrote to all parties ordering the insurer to produce the documents by November 4, 2016 pursuant to Rule 19.3 of the *License Appeal Tribunal Rules of Practice and Procedure*, Version 1 (April 1, 2016) and both parties were provided 7 days to submit arguments on the issue of costs. The applicant filed submissions on the issue of costs, and also sought a timeline extension. Counsel for the applicant followed up with counsel for the insurer via numerous letters and phone calls, without a response. Finally, following a telephone call from the LAT on November 9, 2016, counsel for the insurer filed submissions on the issue of costs taking the position that neither he nor the insurer had acted “unreasonably, frivolously, vexatiously or in bad faith” – the requirement as outlined by the *LAT Rules of Practice and Procedure and Statutory Powers and Procedure Act*, R.S.O. 1990 for an award for costs.

In determining whether the conduct was unreasonable, Madame Adjudicator considered the following: whether the difficulties and prejudice caused to the other party; any delay in proceedings before an administrative tribunal, whose rationale is to provide effective and efficient resolution of disputes in a manner that ensures access to justice for all parties; and whether the rules and orders are respected and followed promptly and responsively.

Madame Adjudicator Lester determined as follows:

- The insurer acted unreasonably during the course of the proceedings.
 - The insurer made no attempt to produce the required documents until after the second Order was made, the insurer and their counsel were both present for the case conference and were aware of and consented to the timelines. Most of the required documents were in the possession of the respondent and no attempts were made to comply with the Order until after the request for costs were made.
 - The insurer was disrespectful of the LAT’s process and provided no explanation as to why it did not comply with the Orders.
 - The insurer’s conduct interfered with the LAT’s capacity to maintain an efficient proceeding. There was a lack of compliance by the insurer, which resulted in the issuance of a second production order, and subsequent telephone call by the LAT to the insurer’s counsel
 - There was extra effort by the applicant’s counsel to seek a second Order enforcing the original Order on productions, and to seek an extension of time for submissions is evidence of the insurer’s unreasonable conduct.
- The insurer’s disregard of two Orders clearly established that its conduct was unreasonable pursuant to Rule 19.1 of the *LAT Rules of Practice and Procedure*.

The decision provides the criteria to be considered in implementing an award for costs before the LAT, particularly where a party has acted “unreasonably.” The decision also serves as a reminder for insurers and counsel to be diligent in keeping track of and responding to requests for productions, particularly where Orders have been made.

Dutton Brock will keep you up to date on any further developments.

If you would like more information on motor vehicle insurance, please do not hesitate to call.

Dutton Brock LLP

438 University Avenue, Suite 1700
Toronto, Canada M5G 2L9

Telephone: (416) 593-4411 Fax: (416) 593-5922
www.duttonbrock.com