

Ontario Superior Court Again Determines that the “New” Statutory Deductible Applies Retroactively in Motor Vehicle Tort Claims

April 15, 2016

The Ontario Superior Court has again determined that the statutory deductible, as enacted on August 1, 2015 by O. Reg. 221/15, applies retroactively to claims for non-pecuniary damages awarded in motor vehicle tort claims.

Justice Charles Hackland of the Ontario Superior Court recently determined that the **adjusted deductible is applicable to existing MVA-related tort general damages claims**. *Corbett v. Odorico*¹ was argued on December 21, 2015 and, pursuant to the new regulation, the deductible applied was determined to be \$36,540. This figure represents a material increase over the previous fixed deductible amount of \$30,000 which first applied in 2003. Justice Hackland's decision in *Corbett* followed the earlier decision reached in *Vickers v. Palacios*² by his Honour Justice Martin James who, in December 2015, had also determined that the adjusted deductible would have retrospective application.

Though not addressed in *Corbett*, as of January 1, 2016, the applicable deductible has now increased to \$36,905.40, based upon the indexation percentage published in accordance with s. 268.1(1) of the Insurance Act. The deductible is now scheduled to reset annually going forwards.

In light of the decision reached in *Cobb v. Long Estate*,³ where in Justice Belch determined that the new regulation is a matter of substantive law and cannot apply retrospectively, it remains likely that the adjusted deductible will require consideration from the Ontario Court of Appeal.

12016 ONSC 1964

22015 ONSC 7647

32015 ONSC 6799

By

[Matthew Gray](#)

Expertise

[Insurance Claim Defence](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.