Potential Jurors Who Pay Automobile Insurance Premiums Can Serve On Civil Juries

August 13, 2018

On August 8, 2018, the Ontario Superior Court released a decision in Kapoor v. Kuzmanovski, 2018 ONSC 4770 ("Kapoor") dismissing a plaintiff's motion to challenge jurors for cause who paid automobile insurance premiums and to have the jury notice struck. This motion had the potential to significantly alter the procedure utilized for selecting juries in motor vehicle accident cases, as well as limiting eligible candidates from the jury pool. Prior to the motion being heard, the Court ordered that the Advocates' Society and the Ministry of the Attorney General of Ontario participate as interveners.

The Facts

The plaintiff's motion sought an order "excluding potential jurors who drive and pay for automobile insurance premiums or have automobile insurance premiums paid on their behalf from the jury pool" as a result of an alleged inherent conflict of interest. The plaintiff also sought to exclude from the jury selection process residents of Brampton, Ontario who pay for automobile insurance or have it paid for on their behalf. The plaintiff's main argument was that prospective jurors in civil motor vehicle accident cases who drive motor vehicles and possess insurance under the province's motor vehicle insurance legislation carry an inherent conflict of interest preventing them from impartiality. The plaintiff asserted that the jurors' financial obligation to pay the insurance premiums "constituted a personal interest adverse to that of Plaintiffs in motor vehicle accident cases."

The defendants argued that the right to a trial by jury is a substantive right and there existed no legal basis to limit the right to a jury trial as submitted by the plaintiff. The intervenors were generally aligned in their positions and with the defendant.

Intervenor Findings

The ministry submitted that “the only valid challenges for cause are those specifically enumerated in the Juries Act, which relate to juror eligibility, not partiality.” As noted in the decision, the Juries Act includes two types of jury challenges in civil trials: (1) for want of eligibility (i.e. not meeting the criteria in the Juries Act), and (2) for ratepayers and officers/servants of municipal corporations, in situations where the municipal corporation is a party.

The ministry further submitted that jurors who possess an interest in the proceeding to be tried are not automatically ineligible to serve. Moreover, the ministry asserted that “an evidentiary basis sufficient to displace the presumption that jurors will be impartial” is required to challenge jurors, and the common law allows a “limited judicial “pre-screening” of prospective jurors” to exclude any with obvious impartiality. Finally, the ministry submitted that jurors should not be challenged in a way that “undermines the representative nature of the jury or is unduly invasive.” The only point of distinction in the Advocates’ Society’s position was that the weight of judicial authority in the province “does not support the availability for cause beyond those expressly provided” in the Juries Act and the Courts of Justice Act. The Advocates’ Society further submitted that any substantive change to the civil jury system permitting a general challenge for cause procedure should only occur “through measured and carefully considered legislative amendments and/or changes to the Rules of Civil Procedure.” Finally, the Advocates’ Society submitted that s. 3 of the Juries Act somewhat supported the plaintiff’s position and asserted that if the Court decided that “an interest in an action” included partiality, then a two-staged test ought to be considered (threshold analysis followed by a consideration of whether the challenging party has discharged its onus to establish that a prospective juror should be dismissed as a result of partiality).

Court Decision and Significance

The Court determined, after a review of the case law, that the Juries Act does not allow a “broad/general challenge for cause” and noted that one should not be read into the Act. The plaintiff’s submission concerning the challenge for cause process in the jury selection was dismissed as a result of the lack of express statutory provision permitting a challenge for cause of prospective jurors on the grounds that they pay insurance premiums or have them paid on their behalf. The Court further concluded that the lack of express provision in the Act or the Courts of Justice Act “or any other related legislation or rules allowing for the exclusion of residents from a jury panel who are insured under motor vehicle liability insurance policies warrants dismissing the Plaintiff’s request for same.” The Court stated that removing all potential jurors who pay for automobile insurance premiums from the jury itself would be inappropriate.

The Court also concluded that there was “an insufficient evidentiary basis to warrant striking the jury notice.” There was no evidence establishing a widespread bias among Brampton citizens (as prospective jurors) against the plaintiff’s interests or “generally against similarly situated Plaintiffs.” In this regard, the Court had found that a survey of 300 Brampton residents did not meet the threshold test for admissibility as expert evidence and was not considered as evidence.

This decision will be important for insurers who prefer to have juries hear motor vehicle accident cases as the decision puts clear limits on a party's ability to challenge jurors, or classes of jurors, for cause in civil cases.

By

Erin H. Durant, Matthew Sherman

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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

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