

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

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