



WINTER 2008 PERSONAL INJURY LEGAL UPDATE

Miller Thomson LLP is pleased to present you with the *Personal Injury Legal Update*. This free information service is offered by Miller Thomson's Personal Injury Lawyers and summarizes legal issues relating to personal injury and insurance-related litigation. Miller Thomson's Personal Injury lawyers handle a wide variety of serious injury and insurance litigation. No matter what the scope or situation, Miller Thomson can provide clients with immediate access to a lawyer with the precise skills and experience required.

ALBERTA'S MINOR INJURY REGULATION STRUCK DOWN!

HISTORY

On October 1, 2004, the *Minor Injury Regulation* came into effect which put a \$4,000.00 cap on pain and suffering damages for people who suffered whiplash injuries in motor vehicle accidents in Alberta. At the same time, legislation was put in place entitled The Diagnostic Treatment Protocol which changed the no fault benefits available to people injured in motor vehicle accidents. The effect of these two pieces of legislation was to treat people who suffered whiplash injuries differently from those who suffered more serious injury such as fractures.

TRIAL DECISION

In May 2007, two women who suffered whiplash injuries in two separate motor vehicle accidents in Alberta brought their claims to trial. They claimed that the *Minor Injury Regulation* discriminated against them based on their injuries or disability. The trial judge that heard the case was Associate Chief Justice Neil Wittmann of the Court of Queen's Bench. At trial, both women argued that the *Minor Injury Regulation* was contrary to the *Canadian Charter of Rights*. Mr. Justice Wittmann said that "by limiting the amount of damages available to those suffering from minor injuries, the legislature has effectively categorized that group of injury victims as less worthy of damages." The decision of Mr. Justice Wittmann which was released February 8, 2008, struck down the *Minor Injury Regulation* retroactive to October 1, 2004. This allows Albertans injured in motor vehicle accidents, through no fault of their own, to recover reasonable compensation for their injuries regardless of what type of injury they have suffered. There is no longer a legislated cap on damages for pain and suffering.

The Diagnostic Treatment Protocol Regulation was not affected by the decision of Mr. Justice Wittmann and so all no fault benefits will continue to be paid according to that Regulation.

WHAT'S NEXT?

Under Alberta law, the Defendants will have an opportunity to appeal the decision and have it heard by the Alberta Court of Appeal. The government has announced its intention to appeal the trial decision.

HOW DOES THIS AFFECT YOU?

The *Minor Injury Regulation* is no longer in force. This dramatic change in the law may have implications for accident victims throughout Alberta. If you have any questions, please contact any one of our Alberta personal injury team.

Our Alberta Personal Injury Group is dedicated to providing comprehensive and integrated legal services to personal injury clients.

OUR ALBERTA PERSONAL INJURY TEAM

Miller Thomson provides services to people injured in motor vehicle accidents with lawyers practising in the personal injury area in Edmonton and Calgary. For more information about our group, visit our website at www.millerthomson.com.

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