

# Nicholaus de Koning

## Partner

### Waterloo Region

#### OFFICE

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## Industries & Expertise

#### EXPERTISE

Insurance Defence | Administrative & Public Law

## Biography

#### BAR ADMISSION

Ontario, 2003

#### LANGUAGES SPOKEN

English

A major part of Nick (Nicholaus) de Koning's litigation practice is the defence of insurance companies in regard to disability claims. He has experience handling long-term disability disputes on behalf of both insurers and plaintiffs, as well as first- and third-party claims arising from motor vehicle accidents.

## Industry involvement

### Thought leadership

- "Court of Appeal Takes Expansive Approach to Definition of 'Accident' in *Caughy* Decision," *KW OIAA Monthly Bulletin*, May 2016
- "Leading Legal Innovation," *GRAND Magazine*, 2015
- Panellist and speaker, Canadian Insurance Claims Managers' Association seminars regarding Bill 15 reforms and transition to Licence Appeal Tribunal, September 2, 2015

- Panellist and speaker at “Crash Course–the Life of A Claim” multi-disciplinary seminar at Bingham’s, Kitchener, June 2, 2015
- “Successful Motion Confirms Defendant’s Right to Prepare Insurer Examiners for Trial,” *Ontario Accident Benefit Case Summaries/Lexology*, October, 2014
- “Recent FSCO Decisions Limit Consequences of Insurers’ Technical Errors on SABS Claims,” 2010

## **Notable matters**

- Kidder and Economical Mutual Insurance Company, FSCO Appeal File P15-0008, decision of Delegate David Evans of January 28, 2016. The applicant was unsuccessful with his appeal as he essentially attempted to revisit the arbitrator’s factual findings. The Appeals Delegate reviewed the applicable test for “error of law” in the accident benefits context.
- Kidder and Economical Mutual Insurance Company, FSCO File A12-006704, decision of December 19, 2014. Nick represented the insurer in this FSCO arbitration in which the insurer was successful in resisting a claim of catastrophic impairment. The applicant’s claims of disability were contradicted by surveillance evidence.
- Lacroix v. Federation Insurance Company of Canada, 2014 ONSC 6002 (CanLII) (also published in Ontario Reports). Nick acted for the defendant, an accident benefits insurer. This lengthy matter, involving a 2007 accident, proceeded to trial in 2014. Before the trial, the plaintiff’s counsel wrote to the defendant’s proposed medical witnesses (all insurer’s examiners) advising them not to speak to defence counsel on the basis the plaintiff did not consent to this. The trial judge confirmed the right of the AB insurer and its counsel to speak to medical witnesses in advance of trial. No consent is needed from the plaintiff.
- Kent v. Stop ‘N’ Cash 1000 Inc. et al 2006 CanLII 22660 (ON SC). Nick represented the plaintiff who was successful in this wrongful dismissal action against two related companies, each of whom denied that the plaintiff was their employee.
- Daoud Seyed v. Federation Insurance Company of Canada FSCO File A07-002110, decision of June 8, 2009. Nick represented the insurer who was successful in having all claims dismissed. The applicant was found not to be credible. The applicant unsuccessfully argued that certain minor technical shortcomings in the adjusting of the file made him automatically entitled to some benefits.
- Ashkan Azimi v. Economical Mutual Insurance Company FSCO File A08-002596, decision of June 7, 2010. Nick represented the insurer who was successful in having the arbitration dismissed on the basis that the applicant failed to establish, on a balance of probability, that he was involved in an “accident.”
- Mrs. S. and Economical Mutual Insurance Company FSCO File A08-001275, decision of February 12, 2010. Nick acted for the insurer who was successful. The arbitration was dismissed. The applicant could not establish that she was employed at the time of the accident, and thus entitled to income replacement or housekeeping and home maintenance benefits. The case contains discussion on why technical breaches on the part of the insurer do not create substantive benefit entitlement where the applicant could not prove entitlement on the merits.

## **Community roles**

- Clay and Glass Gallery of Canada, board of directors (since 2012)
- Volunteer adjudicator, Rental Housing Licence Appeal Tribunal (since 2012), City of Waterloo

### **Memberships & affiliations**

- Member, Canadian Bar Association
- Member, Ontario Bar Association
- Member, Law Society of Upper Canada
- Member, Canadian Defence Lawyers
- Member, Greater KW Chamber of Commerce
- Member, Advocates' Society
- Member, Communitech