

# Accident Benefit Reporter

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## ONCE A PSW, ALWAYS A PSW

On December 6, 2017, Adjudicator Go confirmed that an insured is entitled to be paid an attendant care benefits regardless of whether the PSW was working in his/her field at the time of the collision.

In *J.C.C. v. Echelon*, 2017 CanLII 85731 (ON LAT) the insured sustained significant orthopaedic injuries in a motorcycle collision. A Form 1 Assessment of Attendant Care found his monthly attendant care needs amounted to over \$3,000 per month. The applicant hired Ms. Paula Salazar to provide him with attendant care services. Ms. Salazar was a PSW however, she was working as a lab technician at the time of the collision.

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Echelon refused to pay the attendant care benefit and took the position that since Ms. Salazar was not working as a PSW at the time of the collision, she was only entitled to be compensated for her actual economic loss. The issue before the LAT was whether the threshold test requiring the care provider be "in the course of the employment occupation or profession" meant that the person must exclusively be employed as a health professional in order for the insured to receive the maximum amount of benefits.

Adjudicator Go firmly rejected Echelon's argument and found that *"the phrase 'ordinarily engaged in' is not restricted to employment, but also includes professional occupation, which can be demonstrated through training and professional certification". Further, she went on to state that "The Schedule does not provide that the care provider must be exclusively employed as a health professional for an insured person to obtain the maximum amount of benefits. Nor is the provision limited to a health professional who is engaged in the profession through employment alone"*.

In this case, the fact that Ms. Salazar was able to demonstrate that she was a PSW through training and professional certification and had worked as a PSW in the past, which was sufficient evidence to meet the definition of incurred.

Since the resurrection of the definition of incurred, insurers have been interpreting this section of the SABS in such a way as to shrink this definition as much as possible. This decision, along with the decision of Adjudicator Truong in *A.P and Coseco Insurance Company, 2017 16-004363/AABS* which found that *"just because the professional service provider may be a family member or friend also does not automatically exclude them from eligibility for payment"* will assist injured accident victims with accessing the benefits they are entitled to. ■■■

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## HAVE QUESTIONS ABOUT THE STATUTORY ACCIDENT BENEFITS CHANGES, NEW CATASTROPHIC DEFINITIONS OR THE LAT APPLICATION?

At Thomson, Rogers we pride ourselves on keeping you informed. To arrange a Thomson, Rogers Lunch and Learn, contact **Joseph Pileggi** at **416-868-3190** or [jpileggi@thomsonrogers.com](mailto:jpileggi@thomsonrogers.com)

## UPCOMING EVENTS 2018



**April 7-8 Spring Motorcycle Show** – International Centre, Toronto.  
Stop by the Thomson, Rogers exhibit booth.

**May 2-4 Hamilton Health Sciences 25th Annual ABI Conference** – Hamilton Convention Centre – Thomson, Rogers is proud to be the Platinum Sponsor. Thomson, Rogers' Stacey Stevens and Craig Brown will be presenting. As well as, David MacDonald with co-presenter Dr. Dinesh Arun Kumbhare.

**As a member of the Personal Injury Alliance (PIA Law), Thomson, Rogers is proud to sponsor the following event:**

**June 3 MADD Canada PIA Law Strides for Change (GTA) Event** – JC Saddington Park, Mississauga. This is MADD Canada's annual 5K walk/run. For more information, visit [madd.ca](http://madd.ca).



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