

## Leonard H. Kunka

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Leonard Kunka's litigation practice is dedicated to helping victims and families who are coping with the effects of life-changing injuries.

Leonard's father suffered a devastating traumatic brain injury many years ago, and the experience of living with a family member who was recovering from a traumatic brain injury spurred his desire to devote his professional life to helping others who are going through a similar experience.

Dealing with a brain injured family member has given Leonard a unique understanding of the challenges faced by an individual with a head injury and created in him a compassion and empathy for injured persons and their families.

This experience, together with Leonard's many years of practice devoted solely to helping seriously injured individuals and their families, has allowed Leonard to develop the most effective and efficient methods of getting injured persons the treatment, rehabilitation, care and compensation they require, so that they can get back to as normal a life as possible.

Leonard has been a partner at Thomson Rogers since 1989, and he has extensive trial experience, successfully representing seriously injured individuals and their families, in all types of injury cases.

Leonard is a Certified Specialist in Civil Litigation by the Law Society of Ontario. Leonard is one of a select group of lawyers who has multiple honours, including being selected by his peers as one of *The Best Lawyers in Canada*<sup>™</sup> since 2010, a distinguish rating in the Martindale-Hubbell Law Directory, and inclusion in *The Canadian Legal Lexpert*<sup>®</sup> Directory as a leading practitioner in the field of Personal Injury Litigation."

# Back to School

## ACCESS TO JUSTICE DISTURBING TRENDS AT THE LAT



Leonard Kunka



## 1) CATASTROPHIC IMPAIRMENT UNDER GOS-E

### a) **Abdi v. TD General Insurance Company-(2022) CanLII 11153 (ON LAT)**

- While the LAT indicated that assessments conducted longer than one year post accident may have limited value, the LAT nevertheless indicated that both the insured's GOS-E assessment findings done at the one year mark as well as the GOS-E assessment conducted by the insurer 6 months after the insured's assessment should be considered in determining whether the applicant's injuries satisfy the catastrophic impairment test.

## 1) CATASTROPHIC IMPAIRMENT UNDER GOS-E

- b) The tribunal was unprepared to accept the findings of a GOS-E assessment conducted by an OT as opposed to being conducted by a physician or at least that a physician had directed the OT's GOS-E assessment. The tribunal found that a GOS-E assessment in the case of a TBI should be conducted by a physician or neuropsychologist.
- c) The tribunal looked at each element listed on the GOS-E individually and indicated that the GOS-E form should deal with each element.

## 2) COSTS ORDERS AT LAT HEARINGS:

- Section 19.1 and s.19.5 & 19.6 of the LAT Rules (the latter two sections outline further factors governing when costs can be awarded) and Section 17.1(1) of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22 (“SPPA”)
- While the SPPA section allows an adjudicator to award all or a portion of a party’s costs of the proceeding, the LAT Rules limit costs to \$1,000, and both the SPPA and LAT Rules permit costs only where a party has acted “unreasonably, frivolously, vexatiously or in bad faith”.

Because costs awards are so limited, they fail to act as a deterrent to bad behaviour by either an insured or the insurer.

## 2) COSTS ORDERS AT LAT HEARINGS:

**Blas v. Aviva Insurance Canada, (2021) Can LII 127471(ON LAT)**

\$200 cost award for the insurer’s unreasonable 16 month delay in removing the applicant from the Minor Injury Guideline (MIG)

**O.R. v. Unifund Assurance Company, 2021 CanLII 13001(ON LAT)**

\$250.00 award for insurer’s unreasonable attempt to thwart an Order of the Tribunal allowing for service of a summons upon the adjuster to appear as a witness at the hearing. The insurer insisted on personal service and failed to provide the home address of the adjuster during the COVID pandemic.

## 2) COSTS ORDERS AT LAT HEARINGS:

### **B.F. v. Wawanesa Mutual Insurance Company – File #16-000433**

#### **AABS**

\$250.00 cost award against an insurer for their delay in complying with a production order from the LAT

### **L.D. v. Gore Mutual Insurance Company- File # 17-002762 AABS**

The LAT awarded \$1000 in costs against the Applicant for bringing a motion without any new evidence, for the same relief previously denied by the LAT.

## 2) COSTS ORDERS AT LAT HEARINGS:

### **Bablak v. Gore Mutual Insurance Company- File #20-002022 AABS**

\$1,000 costs award against an applicant who failed to file a case summary, did not meet timelines to file submissions, and delayed in requesting extension of time periods.

### 3) EXTENSION OF TIME PERIODS UNDER THE LAT

***Fratarcangeli v. North Blenheim Mutual Insurance Company, (2021) ONSC 3997***

The Divisional Court ruled that the LAT has jurisdiction under s. 7 of the LAT Act to extend the two-year limitation period for filing an application to the LAT pursuant to s. 56 of the SABS, and the adjudicator should consider these factors in determining whether to extend the time period:

- i) whether there was a *bonafide* intention to bring the application within the time limit;
- ii) the length of the delay;
- iii) prejudice to the other party; and,
- iv) the merits of the application.

### 4) INDEPENDENCE OF THE LAT ADJUDICATORS

***Fratarcangeli v. North Blenheim Mutual Insurance Company, (2021) ONSC 3997***

OTLA has called for an investigation into Adjudicator Therese Reilly who applied for a job with Aviva Trial Lawyers in May 2022 and was hired by Aviva Trial Lawyers in June of 2022 and remained as a LAT adjudicator until November 2022, and in that period decided 13 LAT applications all in favour of insurers (4 of the cases involving Aviva).

A complaint has also been made to the Law Society of Ontario by two lawyers who represented applicants in two of these cases.