

ZTGH CLIENT SEMINAR 2026

Case Law Update Handout

ACCIDENT BENEFITS PANEL

Sorrentino v. Certas Home and Auto Insurance Company, 2026 ONSC 1578

Key takeaway: Under s. 16 of the SABS, home-modification benefits may not be limited to the claimant's residence at the time of the accident; a proposed family residence may qualify where the modifications are reasonable and necessary.

In *Sorrentino v. Certas Home and Auto Insurance Company*, the Divisional Court interpreted s. 16 of the SABS broadly, allowing a catastrophically impaired, 92-year-old Claimant to recover renovation costs for her daughter's home. The Claimant could no longer safely live alone in her condominium and sought approximately \$388,000 to renovate her daughter's residence so she could receive 24-hour care. The Court disregarded the statutory requirement that the Claimant prove that her condominium could not be modified, holding that an "existing home" as per the SABS may include an intended future residence, including a family member's home. Finding the move reasonable and necessary, the Court ordered Certas to immediately pay about \$365,000.

Hussein v. Intact Insurance Company, 2025 ONSC 842

Key takeaway: A timely report of the property damage claim may be sufficient to trigger the insurer's obligation to make reasonable inquiries regarding the claimant's injuries and to provide information about available accident benefits.

In *Hussein v. Intact Insurance Company, 2025 ONSC 842*, the Divisional Court allowed an appeal from a LAT decision denying eligibility to make a claim where the Claimant failed to give specific notice of his intention to claim accident benefits within seven days of the accident. The Claimant had told Intact the day after the collision that his vehicle was heavily damaged, but Intact did not ask about injuries or provide accident benefit forms. The Court held that the LAT interpreted the notice requirement too narrowly, especially given the consumer protection purpose of the SABS. The Claimant's report of the accident was enough to trigger Intact's duties under s. 32(2) of the SABS (i.e., providing him with information on how to make an accident benefits claim/claim forms). In the circumstances, the Court held the Intact could not rely on the Claimant's failure to submit an OCF1 within the statutory timelines to deny the claim.

Abu-Ain v. Security National Insurance Company et al, 2026 ONSC 1494 (CanLII)

Key takeaway: The priority scheme is meant to ensure claimants receive benefits first while insurers sort out priority later; an insurer should not use a LAT preliminary issue to short-circuit an active priority arbitration.

The Claimant was injured in a motor vehicle accident and applied for accident benefits through his aunt's insurer, Security National Insurance Company. Security National began paying benefits and put the Fund on notice of a priority dispute but later denied one of the Claimant's claims for benefits on the basis that he was not financially dependent on his aunt and therefore was not an insured person. The Court held that the LAT's dismissal of the claim on that basis was an abuse of process because the dependency issue was already before the private arbitrator in the priority dispute. The Court held that the LAT's decision undermined the "pay now, dispute later" scheme, which is meant to ensure claimants receive benefits quickly while insurers resolve priority disputes between themselves.

Certas Home and Auto Insurance Company v. Okenge, 2026 ONSC 1189 (CanLII)

Key takeaway: Principal dependency for care does not require constant cohabitation; the focus is on the practical reality of who provided the dominant care and support at the time of the accident.

The Claimant was injured in a motor vehicle accident and sought accident benefits under his sister's insurance policy. Although he had lived elsewhere for school and athletic training, he kept his sister's address as his permanent residence, returned there regularly, and relied on her for emotional, financial, and practical support. The Court upheld the finding that the Claimant was "principally dependent for care" on his sister at the time of the accident, making him an insured person under her policy. The Divisional Court dismissed Certas' appeal, holding that dependency does not require physical cohabitation or vulnerability, and that temporary independence for education does not defeat principal dependency.

EMERGING VOICES PANEL***Ko v. Li, 2025 ONSC 2766 (CanLII)***

Key takeaway: Lawyers remain responsible for verifying every case, citation, and legal proposition before filing materials; AI or staff involvement does not reduce counsel's duty to the court.

In this 2025 Ontario Superior Court decision, Justice Myers addressed concerns about apparently fake AI-generated case citations or "hallucinations" in a factum filed by counsel. Counsel cited several cases that did not appear to exist and relied on them again during oral submissions but could not provide proper citations or copies when asked. After the hearing, Justice Myers also found that one real case had been cited to support counsel's position actually held the opposite position. He emphasized that lawyers remain responsible for verifying all authorities and must faithfully represent the law, avoid fabricated or inaccurate citations, competently use technology, supervise staff, and ensure human review of any AI-generated materials. He emphasized that with the arrival of AI it was important to rely on accurate precedents rather than non-existence authorities or misapplication of the caselaw and referenced several cases in other jurisdictions suggesting a larger issue.

Kapahi Real Estate Inc. v. Elite Real Estate Club of Toronto Inc., 2026 ONSC 1438

Key takeaway: Real case citations do not cure fabricated quotations; counsel must verify both the authorities and the exact propositions or quotations relied on before filing materials.

In this case, the Court dealt with a factum that cited real cases but included quotations that did not actually appear in those cases. Counsel denied using AI and said the errors were the result of carelessness and human errors. The Court rejected the idea that this was simply a minor mistake, noting that seven separate quotations were completely made up. Justice Myers questioned how such an error could be made and noted the cover-up may be worse than the initial error. He emphasized that lawyers must accurately present the law and verify authorities before filing materials with the Court. Although the Court did not make a finding that AI was used, the decision was referred to the Law Society of Ontario for review. Lawyers must carefully check every case and quotation they rely on. Fake or inaccurate legal authorities, whether caused by AI or human error, can lead to serious professional consequences.

TORT PANEL

***Gumbley v. Vasiliou*, 2025 ONCA 851**

Key takeaway: In medical negligence cases, causation can be proven through the full record, including expert evidence, business records, party admissions, and common-sense inferences under the “but for” test.

This decision upheld a finding that delayed emergency treatment in a severe asthma case caused catastrophic brain injury. The Court confirmed that negligent delays in escalation and intubation were causative under the “but for” test. A key evidentiary issue involved a hospital note recording hypoxemia, which the Court held was admissible as a business record or party admission even though the note involved double hearsay. The Court also upheld the trial judge’s reliance on expert and circumstantial evidence, confirming that causation in medical negligence can be established through common-sense inferences from the full record.

***Barry v. Anantharajah*, 2025 ONCA 603 (CanLII)**

Key takeaway: A modest damages award does not automatically cap costs where the plaintiff achieves meaningful success and the defence took a hardline position without a realistic settlement offer.

The Ontario Court of Appeal upheld a \$300,000 costs award in a personal injury action despite the plaintiff receiving only about \$16,000 in damages. The plaintiff was struck by a vehicle and achieved partial success at trial, while the defendant had taken an all-or-nothing position and argued for zero damages. The Court emphasized the deference owed to discretionary costs decisions and held that success must be assessed relative to the parties’ positions going into trial. It also endorsed the trial judge’s reliance on the defendant’s failure to make a realistic settlement offer and its hardball litigation strategy, confirming that proportionality does not automatically reduce reasonably incurred costs.

***Rodriguez-Vergara v. Lamoureux*, 2025 ONCA 620**

Key takeaway: After the at-fault auto policy is exhausted, the plaintiff’s OPCF 44R coverage responds before the defendant’s personal umbrella policy; the umbrella policy is not treated as motor vehicle liability coverage for that priority analysis.

The Court of Appeal held that the plaintiff’s OPCF 44R underinsured coverage responded before the defendant’s personal umbrella liability policy. It found umbrella policies fall outside Ontario’s regulated auto insurance regime and are not captured by s. 7 of the endorsement. The Court also rejected RSA’s attempt to subrogate against the umbrella policy. The decision limits recovery to motor vehicle liability policies and increases exposure for OPCF 44R insurers.

***Pederson v. Forget*, 2026 ONCA 118**

Key takeaway: Trial judges have broad discretion to control expert evidence; testing that does not closely match the incident conditions may be excluded, and the exclusion will not justify a new trial unless it could have affected the result.

The Ontario Court of Appeal upheld the exclusion of expert slip-resistance testing in a staircase fall case because the testing did not closely match the conditions of the fall. The plaintiff claimed the wooden stairs felt “like ice,” while the homeowners denied using Pledge and said the stairs were safe. The Court found no error or miscarriage of justice, noting the jury’s decision largely turned on credibility. The case confirms that expert evidence must reflect the actual facts of the incident, and excluded evidence must be significant enough to justify a new trial.

