

Helping Health Professionals Navigate Accident Claims and the LAT System

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How to help your clients

“The insurer is entitled to make a determination as to whether a treatment or assessment plan is **REASONABLE** and **NECESSARY** based on the information provided by the claimant.

The BURDEN IS ON THE CLAIMANT to prove that he or she is entitled to the benefit sought.

The claimant’s assertion, without any evidentiary support, is not sufficient to meet the burden of proof.”

- *18-000937 v Unifund Assurance Company, 2019 CanLII 22195 (ON LAT)*



How to help your clients cont'd

- Good rapport with client and AB adjuster
- Provide update to lawyer
- Write clear reports and updates
- Handwritten CNRs are often ignored or skimmed.



How to help your clients cont'd

- Reasonable, Defensible and Consistent treatment requests
- Provide support for position in writing
- First hand observation vs complaint
- Consider strategies to avoid IE

THE LAT PROCESS

LICENCE APPEAL TRIBUNAL
THE ONLY DISPUTE RESOLUTION SYSTEM
FOR STATUTORY ACCIDENT BENEFITS

LAT Process: Key Details

- Two years to file at the LAT from denial or reduction
- Different but similar to FSCO
- Not bound by FSCO decisions or other LAT decisions
- Supposed to be faster
- Costs recovery is very rare



Key Details Cont'd

- Need most supporting reports upfront before application with LAT
- Faster and earlier dates but not as fast as it was supposed to be
- Less adjournments and date flexibility



LAT Process

1. FILE APPLICATION
2. RESPONSE TO APPLICATION BY INSURER
3. LAT SCHEDULES CASE CONFERENCE DATE
4. PARTIES TO FILE CASE CONFERENCE SUMMARY 10 DAYS BEFORE CASE CONFERENCE



Case Conference: Purpose

- Identify, discuss and narrow issues
- Settlement negotiations
- Hearing details
 - a) Duration and Date
 - b) Written, Oral, or Electronic



Hearings

- What type of evidence will you provide?
- Report, affidavit, or in person
 - Depends on issue
 - Entitlement, amount, or both
- Will you testify?
- Will you be needed for cross-examination only?



Hearings: Experts

- Expert witnesses are different
- Form 53 not sufficient – need LAT Form
- “Acknowledgement of Expert’s Duty”
Rule 10.2(b)
- “too many experts are no more than hired guns who tailor the reports and evidence to suit the client’s needs”
- “objective and non-partisan and within the expert’s area of expertise”

Expert Evidence

- *Westerhof v Gee Estate* (ON Court of Appeal)
- Litigation expert, participant expert, non-party expert
- Expert supporting a treatment plan found to be a participant expert (17-003600 v Aviva 2019 CanLII 6335)
- Most OTs, case managers, and other treatment providers will probably be participant experts



Hearings: Role Of Participant Experts

- Treatment providers usually carry more weight
- Not hired guns
- Need well written reports
- Keep good notes
- Notes can be ordered produced to counsel and the tribunal



Hearings: Being Examined

- DO NOT BE AN ADVOCATE
- Prepare, prepare, and prepare.....before the hearing
- Understand the strengths and weaknesses of your evidence
- Speak to claimants' counsel ahead of time
- Anticipate defence questions and issues



Hearings: Being Examined

- What is a summons?
- Can be by party that hired you or the other party
- Attendance money (not enough)
- Personal service
- No property in a witness but treatment ethics
- Right to remain silent



Hearings: Being Examined

- Direct Examination – Open – 5 W's
- Cross-examination – leading questions
 - You don't have to agree
 - Counsel can't speak with you during cross examination
 - Don't be argumentative
 - This is where "being an advocate" can be an issue



Hearings: Being Examined

- Re-examination – Open
 - done for specific reasons so listen to question carefully
 - Trying to get specific answer to fix evidence from cross
 - Still not an advocate



Hearings: Being Examined

- Speak slowly and clearly
- Don't talk over anyone
- Concede points if obvious
- Stand your ground when necessary
- Eye contact with decision maker
- Consider aids or charts
- Keep evidence simple - adjudicator is not a medical expert



Cost Considerations when facing a denial

- Even if successful, LAT rarely awards costs
- Is a hearing/application worth it?
 - Deductions from tort
 - Expert fees
 - Benefits to client?



AB and Tort Interaction

- Insurance Limits
 - Is there a tort claim?
 - Coverage issues?
 - Treatment
 - Reports
- Collateral benefits – deduction from tort



AB and Tort Interaction cont'd

- Reports are mutually helpful – need to work together (remember the forms!)
- Approved treatment plans legitimize claims
- Timing of AB settlements
- Ongoing treatment after settlement

QUESTIONS?



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THANK YOU!

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