



Ruling Concerning s. 16 of the Health Care Costs Recovery Act

In an ongoing case involving catastrophic injuries, the Plaintiff applied during trial to amend her Statement of Claim to add a very substantial claim for health care costs pursuant to the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27 (the “Act”). Justice Ehrcke dismissed the application ([Reasons for Judgment are reported at 2009 BCSC 652](#)) and, in doing so, made an important finding regarding the ability of a defendant to challenge a Minister’s Certificate issued under s. 16 of the Act.

Pursuant to s. 16 of the Act, the Minister will, at some point during the conduct of an action provide the parties with a Certificate that sets out the past and future health care services that the Minister has determined were a result of the fault of the alleged wrongdoer (s. 16(1)) as well as the costs of those services (s. 16(2)). The Act specifically states that the Certificate is “proof” of the health care services and “conclusive proof” of the costs of same. In his decision, Justice Ehrcke concluded that, because of the use of the words “conclusive proof” in s. 16(2), the costs of the services set out in a Certificate are irrebuttable. Importantly, however, Justice Ehrcke found that because s. 16(1) refers to “proof” and not “conclusive proof” it creates merely a rebuttable presumption that the services listed were a result of the wrongdoing. The Court concluded:

“Notwithstanding the filing of a certificate under s. 16(1) of the Act, therefore, it is open to the defendants to contest whether all the health care services claimed in the Minister’s certificate are attributable to the accident.”

By this ruling, the Court has confirmed that defendants to a personal injury action may challenge every service listed in a Certificate that the defendant says, and can establish through evidence, was not the result of its fault but would be

attributable to some other cause. For example, in the case from which this decision resulted, the Defendants argued that a portion of the Plaintiff’s health care costs between the time of the accident and the commencement of the trial were attributable to circumstances or conditions that pre-existed the accident. Indeed, in many cases, plaintiffs will have suffered from pre-existing, or unrelated post-accident, conditions which give rise to health care costs that are not properly attributable to the fault of the defendant. Given the difficulty associated with determining which services may be attributable to the alleged wrongdoing and which are attributable to other sources, it is entirely possible, if not likely, that the Minister will often include in its Certificate services that are attributable to causes other than the alleged wrongdoing.

Accordingly, it is important for all persons responsible for the resolution of a required payment to the Minister under the Act to carefully consider the services listed in the Certificate and to determine whether the Minister has included services that are not properly attributable to the fault of the alleged wrongdoer. And, by his recent decision, Justice Ehrcke has confirmed the right of all alleged wrongdoers to challenge the Minister’s list and establish that services listed in the Certificate should be removed on the basis that they were not caused by any fault of the alleged wrongdoer.

For more information on the HCCRA, please contact:

Rob McLennan • rmclennan@ahbl.ca
Todd Davies • tdavies@ahbl.ca
Tim Outerbridge • touterbridge@ahbl.ca