

Case Name:

Kalinkine v. Ontario (Superintendent of Financial Services)

Between

Alex Kalinkine, (plaintiff), and
The Superintendent of Financial Services Commission of
Ontario, Darren Lee Perkins and Julia F. Perkins,
(defendants/appellants/respondents on appeal)

[2004] O.J. No. 5138

Docket: C41778

**Ontario Court of Appeal
Toronto, Ontario
Borins, Feldman and Cronk JJ.A.**

Heard: December 14, 2004.

Oral judgment: December 14, 2004. Released: December 17, 2004.

(5 paras.)

On appeal from the order of Justice Michael H. Tulloch of the Superior Court of Justice dated April 14, 2004.

Counsel:

Ralph D'Angelo for The Personal Insurance Company of Canada and the
defendants/appellants Darren Lee Perkins and Julia F. Perkins

S.J. Sokol and John Friendly for the Minister of Finance for Ontario on behalf of and in
the name of the defendant/respondent on appeal, The Superintendent of Financial
Services Commission of Ontario

ENDORSEMENT

The following judgment was delivered by

¶ 1 **THE COURT** (oral endorsement):— The issue on this appeal is whether the Motor Vehicle Accident Claims Fund (the "Fund") is entitled to seek restitution through the courts from The Personal Insurance Company of Canada ("Personal") (represented with the appellants) for statutory accident benefits ("SABS") paid by the Fund to an injured tort victim in circumstances where Personal, the insurer of the tortfeasor,

concedes that it bears primary responsibility for the payment of the SABS and there is no dispute as to the quantum of the benefits paid by the Fund.

¶ 2 The appellants argue, on several grounds, that the Fund is not entitled to seek restitution through the courts because it is bound by the arbitral dispute resolution model and all other provisions of O. Reg. 283/95 under the Insurance Act, R.S.O. 1990, c. I.8, entitled "Disputes Between Insurers" (the "Regulation"). In our view, this argument cannot succeed for two principal reasons.

¶ 3 First, s. 1 of the Regulation establishes that it applies only to "insurers" that are required to pay SABS under s. 268 of the Insurance Act. The Fund is not an "insurer" for the purpose of the Insurance Act or the Regulation. Section 6(2) of the Motor Vehicle Accident Claims Act, R.S.O. 1990, c. M.41 deems the Fund be an insurer only for the limited purpose of the Statutory Accident Benefits Schedule referred to in that section: see also *Young v. Ontario (Minister of Finance)*, [2003] O.J. No. 4832 (Ont. C.A.) and *Ontario (Minister of Finance) v. Allstate Insurance Co.*, [2001] O.J. No. 1181 (S.C.J.).

¶ 4 Second, and in any event, nothing in the Regulation purports to remove the Fund's right to seek restitution through the courts in a proper case. Contrary to the appellants' contention, we are not persuaded that s. 11 of the Regulation reflects a legislative intention to displace the Fund's common law right to seek restitution in court proceedings. Section 11 affects the rights of insured persons in defined circumstances, not the substantive rights of the Fund.

¶ 5 Accordingly, for these reasons, the appeal is dismissed. The respondent is entitled to its costs of this appeal as against Personal on a partial indemnity basis, fixed in the amount of \$5,000, inclusive of disbursements and Goods and Services Tax.

BORINS J.A.
CRONK J.A.
FELDMAN J.A.

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