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CASE SUMMARY: ONSC DISMISSES CONSTITUTIONAL CHALLENGE – SECTIONS 267.5(1) AND 280 OF THE INSURANCE ACT DO NOT VIOLATE THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Sections 267.5(1) and 280 of the *Insurance Act*, R.S.O. 1990, c. I.8, do not violate sections 15 and 7 of the Canadian *Charter of Rights and Freedoms*.

Insurance law – Automobile insurance – Statutory provisions; Interpretation of legislation – Constitutional issues; Charter of Rights

Campisi v. Ontario (Attorney General), [2017] O.J. No. 2777, 2017 ONSC 2884, Ontario Superior Court of Justice, May 31, 2017, E.P. Belobaba J.

Joseph Campisi brought an application challenging the constitutionality of two automobile accident provisions in the *Insurance Act*: section 267.5(1) which limits the pre-trial recovery of lost income to 70% of gross income; and section 280, which grants sole jurisdiction to the Licence Appeal Tribunal to resolve Statutory Accident Benefits Schedule disputes, subject only to appeals on questions of law or applications for judicial review. Mr. Campisi argued the impugned provisions violate sections 15 and 7 of the *Charter of Rights and Freedoms*.

The Court concluded Mr. Campisi did not have standing to bring the application. Mr. Campisi is a personal injury lawyer. He had not been injured in an automobile accident, was not claiming for lost income or disputing a Statutory Accident Benefits Schedule benefit before the Licence Appeal Tribunal. The Court concluded Mr. Campisi lacked private interest standing to bring the constitutional challenge because he was not directly affected by section 267.5(1) or 280 of the *Insurance Act*. In addition, the Court found Mr. Campisi also lacked public interest standing. Public interest standing may be granted if there is a serious justiciable issue raised; the applicant has a real stake or a genuine interest in the issue; and, in all the circumstances, the proposed application is a reasonable and effective way to bring the issue before the courts. The Court found Mr. Campisi did not have a real stake or genuine interest in the constitutional validity of the two provisions in question and the proposed application was not a reasonable and effective way to bring the constitutional issues before the Court.

The Court went on to consider the constitutionality of the two provisions.

Section 15(1) of the Canadian *Charter of Rights and Freedoms* states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Court found that neither of the impugned provisions discriminates between persons based on their physical disability. Regarding section 267.5(1), the fact that auto accident victims are subject to a limitation on pre-trial income while, for example, home accident victims are not, is not a distinction based on disability. It is a distinction based on the cause or place of the injury which is not a prohibited ground under the *Charter*. Regarding section 280, the case law establishes that the distinction between people who are able to enforce legal rights in the court system and those who are part of an administrative scheme is not a distinction based on disability. Accordingly, the challenge based on section 15 of the Charter was dismissed.

Section 7 of the *Charter of Rights and Freedoms* provides that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The Court found that the applicable case law clearly establishes that neither a statutory limitation on tort damages nor the elimination of a court option deprives an accident victim of his or her right to life, liberty, or security of the person. Accordingly, the section 7 challenge was also dismissed.

This case was digested by [Aaron D. Atkinson](#) and edited by [Steven W. Abramson](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at aatkinson@harpergrey.com or sabramson@harpergrey.com or review their biographies at <http://www.harpergrey.com>.