

## INSURANCE LAW BULLETIN

March 2018 – Rose Bilash

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### RECENT TOP DECISIONS FROM THE LAT & FSCO

#### POST ACCIDENT INCOME and DEDUCTIONS CLARIFIED

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[The information below is provided as a service by Shillingtons LLP and is not intended to be legal advice. Those seeking additional information on the issues above should contact the firm at (519) 645-7330.]

*A.S. v. Economical Insurance* (16-003197/AABS, January 10, 2018)

The issue involved a determination whether the claimant's participation in a business post-accident could be characterized as "earned income" under s. 7(3)(b) such that the insurer could deduct 70% of it from the claimant's income replacement benefit. The applicant, a chiropractor, was the owner/operator of Active Chiropractic. He hired another chiropractor to treat his patients following the accident. However, the applicant continued to be responsible for the control of the business and continued to receive an income despite his reduced involvement. Adjudicator Robert Watt held that sections 4 and 7 of the *Schedule* did not distinguish between active and passive income in the calculation of an insured's IRB. As the sections referred to income earned from the business, any net income was properly deductible whether active or passive. Adjudicator Watt noted that his reasoning was consistent with several FSCO decisions, including *Garic v. Markel Insurance Company of Canada* (FSCO 07-000909), *Zirger v. Commercial Union Assurance Company* (FSCO A97-001386) and more recently, *Perth Insurance Company v. Surani*, [2017] OFSCD No. 230 (Appeal P16-00022).<sup>1</sup>

*G.K. v. Unifund Assurance* (17-001274/AABS, June 29, 2017)

The applicant argued that the net LTD payment was deductible from his IRB based on his interpretation of the phrase "received by" in section 4(1)(a) which defined "other income replacement assistance" as the amount of any gross weekly payment for loss of income that *is received by* [emphasis added] or available to the person as a result of the accident. The adjudicator dismissed the applicant's argument, noting that "other income replacement assistance" in section 4(1) and s.7(1) referred only to the gross amount of disability benefits.

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<sup>1</sup> Claimant's counsel in the *Perth Insurance Company v. Surani* case has applied for Judicial Review of Delegate Evans' appeal decision.