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## CASE SUMMARY: LIMITATION PERIOD FOR STATUTORY ACCIDENT BENEFITS IS SUBJECT TO RULE OF DISCOVERABILITY

### Administrative law – Judicial review – Application – Appeals – Compliance with legislation – Limitations – Discoverability rule

*Tomec v. Economical Insurance Co.*, [2019] O.J. No. 5677, 2019 ONCA 882, Tomec v. Economical Insurance Co., Ontario Court of Appeal, November 8, 2019, C.W. Hourigan, M.L. Benotto and J.M. Fairburn JJ.A.

The appellant was a pedestrian and was struck by a motor vehicle on September 12, 2008. She suffered serious injuries. She applied to her insurer, the respondent Economical Insurance Corporation, and received statutory accident benefits for attendant care and housekeeping pursuant to the Statutory Accident Benefits Schedule (“SABS”).

The appellant was only entitled to attendant care and housekeeping benefits for 104 weeks following the accident, unless she was designated as having a “catastrophic impairment.” In August 2010, the respondent notified the appellant she would no longer be eligible for the benefits she was receiving after September 2010. As of that time, the appellant’s injuries did not qualify her for “catastrophic impairment” benefits; however, over the next five years, the appellant’s condition worsened, and by May 2015 the appellant’s injuries met the definition for “catastrophic impairment” benefits.

When the appellant sought benefits, on the basis she then qualified for “catastrophic impairment” benefits, the respondent denied attendant care and housekeeping benefits on the basis the appellant was out of time. The respondent relied on s. 281.1(1) of the Insurance Act, R.S.O. 1990, c. I.8 and s. 51(1) of the SABS, which provide that any dispute over benefits must be brought within two years of the insurer’s refusal to pay the benefits.

The issue on appeal was whether that two-year limitation is subject to discoverability.

The Court of Appeal concluded the limitation period applicable to a claim for attendant care and housekeeping benefits under the SABS is not a “hard limitation.” It held there is a single reasonable interpretation of s. 281.1(1) of the Insurance Act and s. 51(1) of the SABS – the limitation period contained in those provisions is subject to the rule of discoverability because it is directly tied to the cause of action that an insured can assert when denied benefits. A “hard limitation” period is contrary to the purposes of the SABS and would lead to absurd results inconsistent with the policy rationale underlying limitation periods.

The Court of Appeal set aside the orders of the Divisional Court and Licence Appeal Tribunal and declared that the appellant was permitted to proceed with her application for those benefits.

This case was digested by [Joel A. Morris](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Joel A. Morris at [jmorris@harpergrey.com](mailto:jmorris@harpergrey.com).