

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, Lederer and Sutherland JJ.

BETWEEN:)	
)	
Timur Khan)	<i>Joseph Campisi Jr. and Sylvia Guirguis, for</i>
)	the Appellant
Appellant)	
)	
– and –)	
)	
Allstate Insurance Company of Canada)	<i>Peter Yoo, for the Respondent</i>
)	
Respondent)	
)	
)	
)	
)	HEARD at Toronto: February 3, 2020

REASONS FOR DECISION

SUTHERLAND J.

- [1] On February 21, 2017, the appellant, Timur Khan, was involved in an automobile collision. He sought interim statutory accident benefits. On May 16, 2019, Adjudicator Letourneau of the Licence Appeal Tribunal (“LAT”) refused to grant interim benefits because LAT does not have jurisdiction to do so. Mr. Kahn appeals that decision.
- [2] At the appeal hearing, the appeal was dismissed without costs with these reasons to follow.
- [3] Mr. Khan’s statutory accident benefits claim was settled on September 20, 2019, so that there is longer a live controversy between the parties. Nonetheless, the appellant argues that the court should exercise its discretion to decide whether the LAT has jurisdiction to grant interim statutory benefits.

- [7] The Ontario Court of Appeal in *Mental Health Centre Penetanguishene v. Ontario*⁶ (*MHCP*) considered whether to exercise its discretion to decide on “the duty of the [Ontario Review] Board to include directions as to the interim custody, and available interim privileges, in a disposition that involves the transfer of a detainee from one hospital to another”⁷ when the detainee has been found not criminally responsible on account of mental of disorder. In that case, the detainee had already been transferred.
- [8] After finding that there was no live controversy, the court applied *Borowski*⁸ and found that any issue concerning the failure of the Board to provide for interim or residual custody of a detainee would remain “live only for a short period in appellate time and thus is largely evasive of appellate review.”⁹ On this basis, the court exercised its discretion to hear the appeal.
- [9] The appellant submits that this case is similar to *MHCP* in that the issue of interim disbursements remains live only for a short period of appellate time, and the issue has far-reaching consequences that require adjudication.
- [10] I do not accept this submission. The circumstances in *MHCP* are significantly different from the facts of this case. In *MHCP*, the appellant was ordered to be transferred to CAMH with various privileges. However, the transfer to CAMH did not take place for six months after the disposition was issued. While the detainee remained at *MHCP*, the detainee was not provided with any privileges, even though the treating psychiatrist expressed the view that the detainee should receive the same discretionary privileges at *MHCP* during the time between disposition and transfer. The Board did not grant such privileges. The period of review time between disposition and transfer in other like cases could be very short: perhaps two months or less.
- [11] Here, the period of time for review is significantly longer. In the case at bar, the period between the denial of interim benefits and settlement of the underlying claim was about four months. The applicant did not seek an expedited hearing in Divisional Court – hearings that are readily available in an appropriate case. There was no evidence before the court to indicate that the period of time for a hearing in this court makes the issue of interim benefits “evasive of review.” In short, it is not established that the issue before this court is “evasive of review” in a manner comparable to the circumstances in *MHCP*.
- [12] Further, the issue in *MHCP* had “a practical impact on a group of mental disorder detainees...subject to custodial dispositions and hospital transfers.”¹⁰ The interests at stake – constraints on the liberty of persons in custody over a period of months – merited using scarce judicial resources to adjudicate.

⁶ 2010 ONCA 197.

⁷ *Ibid*, at para. 8.

⁸ *Ibid*, at paras. 37-42.

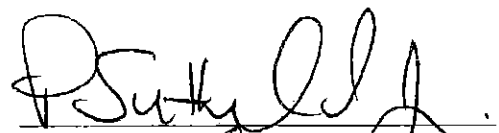
⁹ *Ibid*, at para.47.

¹⁰ *Ibid*, at para. 47.

[13] The question of the LAT's jurisdiction to grant interim benefits does not have a similar effect on all persons claiming accident benefits. Claimants can seek an expedited LAT hearing where they claim their need for benefits is urgent. Claimants can recoup their costs of interim benefits in the final adjudication of their claim. Only a subset of claimants may be faced with a failure of immediate material compensation arising from delay in LAT's claims process.

[14] This is not to suggest that the issue of interim benefits is unimportant or affects very few people. There is no record before this court to support such conclusions. On the facts of the one case that is before us, there is no basis to conclude that the substance of the Adjudicator's interim ruling will create a situation where material harm could inevitably result to an identifiable group of people. A future case, which is not moot, may provide a better factual foundation for review in this court.

[15] The court therefore declines to exercise its discretion to adjudicate an issue which, in Mr. Khan's case, is now hypothetical. The appeal is dismissed as moot, without costs.



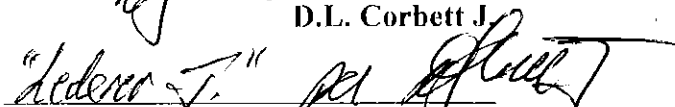
Sutherland J.

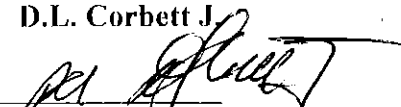
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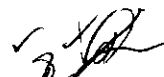


D.L. Corbett J.

I agree



"Ledeker J." per 
Ledeker J.


Released: June 8, 2020

CITATION: Kahn v. Allstate Insurance Company of Canada, 2020 ONSC 3578
DIVISIONAL COURT FILE NO.: 19-00335-00
DATE: 20200608

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– and –

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