

The Healthcare Costs Recovery Act: Not Just For Bad Drivers

By: Valerie Dixon

The Health Care Costs Recovery Act came into force in British Columbia just over a year ago. Under that legislation, if a person receives healthcare services for a “personal injury” as a result of the negligence or “wrongful act” of a “wrongdoer,” the wrongdoer must indemnify the Ministry of Health for costs associated with the healthcare received. The act is somewhat unprecedented. While other jurisdictions have similar legislation, it typically only applies to hospital services costs. In BC, however, virtually all forms of healthcare services fall within the act, including doctor’s visits, family support, occupational therapy, etc. – essentially all government funded healthcare service. And not just services which have been rendered – the act also applies to services which may be rendered in the future.

Open To Interpretation

At first blush, it might be assumed that the act only applies to physical personal injuries. However, the term “personal injury” is not defined in the act (except to state that the term, for certain purposes, includes occupational disease as defined in the Workers Compensation Act) and is, therefore, open to interpretation by the courts. The term “wrongdoer” is defined as a person whose negligent or wrongful act or omission causes or contributes to a beneficiary’s personal injury or death, and includes a person who is responsible at law for the acts or omissions of that person (an employer, for example). Not surprisingly, the term “wrongful act” is not defined in the act and is also open for interpretation.

The concern for employers in BC is whether the act can expose them to liability for healthcare costs relating to “wrongful acts” which are committed in the course of employing (or, more likely, terminating the employment) individuals. The Ministry of Health has indicated that it intends to pursue recovery of healthcare costs in certain wrongful dismissal cases.

We know from the Supreme Court of Canada case *Honda Canada Inc. v. Keays* that if an employee can prove that the manner in which his or her employment was dismissed caused mental distress, and the employee suffered actual damages as a result, then the employee may be entitled to compensation for those damages. The court cited the following as examples of conduct in dismissal resulting in compensable damages: attacking the employee’s reputation by declarations made at the time of dismissal, misrepresentation regarding the reason for the decision, or dismissal meant to deprive the employee of a pension benefit or other right.

The question is whether mental distress qualifies as a “personal injury” for the purposes of the act. If it does, then under the act, if an employee has suffered mental distress as a result of the manner in which the employee was terminated (the “wrongful act”), then the employer may be liable to the Ministry of Health for the cost of any healthcare services that the employee received or will receive as a result.

Worthy Of Note

It is worthy of note that the act clearly states that it does not apply to healthcare services provided in relation to personal injury arising out of employment if compensation is paid or payable by WCB. The Workers Compensation Act distinguishes “personal injury” sustained in the course of employment (for which coverage is provided, with some exceptions) and “mental stress,” which is only covered if, among other things, it is not caused by a decision of the employer relating to the worker’s employment, including a decision to terminate the worker’s employment. The language of the Workers Compensation Act seems to provide some support for the argument that mental distress is not a “personal injury,” and thus not covered by the act. However, it is not conclusive of the issue.

To date there have been no court decisions in BC which consider whether an employer is liable for the cost

of healthcare services as a result of an act or omission committed in the course of employment or termination of employment of an employee. We will keep you informed of any developments. ■

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