

Insurers Rejected in Bid to Temporarily Re-instate Alberta Insurance Caps (Update)

The Alberta Court of Appeal has rejected a request to delay the effect of the recent Court of Queen's Bench (QB) decision [1] to strike down a \$4,000 cap [2] on automobile claims for minor injuries. State Farm Insurance argued that the effects of the QB decision should be delayed until the Court of Appeal hears the appeal this fall. State Farm Insurance said that enforcing the QB decision would cause irreparable harm to itself and the industry. The Court of Appeal disagreed.[3]

The Court of Appeal applied a three-part test in deciding whether or not the cap should be temporarily reinstated:

1. Is there a serious issue on appeal?
2. Will irreparable harm result if the stay is not granted?
3. Does the balance of convenience favour granting a stay? [4]

Although State Farm met the first part of the test, it failed to convince the judge that irreparable harm would result if the QB decision were to stand. Notably, the Court of Appeal stated that "[t]here is no evidence showing that claimants are being paid in excess of the cap." [5] Finally, the court found that the balance of convenience did not favour the granting of a stay. Justice Patricia Rowbotham said that temporarily reversing the QB decision "would harm the public interest in failing to uphold Charter rights and would negatively affect claimants by interfering with their actions." [6]

Further Reading:

Jonathan Maryniuk, ["Insurance rates set to rise after minor injuries cap struck down \(Update\)"](#) Centre for Constitutional Studies (June 2008).

[1] [Morrow v. Zhang](#), 2008 ABQB 98.

[2] [Minor Injury Regulation](#), Alta. Reg. 123/2004.

- [3] Robin Collum, [“Insurers denied reprieve”](#) Edmonton Journal (29 June 2008).
- [4] [Morrow v. Insurance Bureau of Canada](#), 2008 ABCA 248 at para. 5.
- [5] Ibid. at para. 17.
- [6] Ibid. at para. 18.