

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Economical Insurance Company v. Rushton, 2008 NSSC 237

Date: 20080805
Docket: SH 288743A
Registry: Halifax

Between: The Economical Insurance Company
Applicant

v.

Lyndsay Janelle Rushton
Respondent

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Judge: The Honourable Justice Gerald R P Moir

Heard: 24 June 2008 at Halifax

Subject: Small Claims Court appeal; standard of review
Insurance; Section B coverage; four year limit

Issue: (1) Standard of review.
(2) When are expenses “incurred” in the meaning of the temporal limit of the standard Section B terminology?

Summary: Insured followed course of physiotherapy at the IWK until she turned eighteen. Physiotherapy remained necessary, but she had to obtain it outside the children’s hospital. Before therapy resumed, the fourth anniversary of the accident passed. The standard policy covers expenses “incurred” before the fourth anniversary. An adjudicator allowed the insured’s claim. He concluded that the ongoing physiotherapy expenses were “incurred” before the anniversary.

Result: (1) On a question of law, such as interpretation of a contract, the standard of review on a Small Claims Court appeal is correctness.
(2) Early decisions interpreted “incurred” as making oneself liable for, but the weight of authority is now with a broader interpretation that captures expenses known with certainty to befall upon the insured. The adjudicator correctly interpreted and applied the insurance contract.

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