

EXAM 6 – CANADA, SPRING 2016

5. (2 points)

In 2011 and 2012 the Ontario Court of Appeal ruled on two significant cases regarding the criteria to meet the definition of catastrophic impairment. Fully describe the impact of one of these two cases on the definition of catastrophic impairment, including the original court decision and the subsequent appeal decision.

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SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 5	
TOTAL POINT VALUE: 2	LEARNING OBJECTIVE: A3
SAMPLE ANSWERS	
<p>Sample answers:</p> <p>Aviva vs Pastore</p> <p>The Pastore has a serious accident, her right leg was broken after a serious procedure. After use one leg for so long her other leg is not working properly. She claimed for the coverage under the catastrophic coverage.</p> <p>There are two types of catastrophic definition</p> <ul style="list-style-type: none">• Class 4 impaired catastrophic• Class 5 extreme catastrophic <p>To qualify class 4 there are 4 criteria (function for daily activity, social function, concentration, decompensation from work)</p> <p>Original court: if a cat loss and DAC assessment approved to be CAT</p> <p>Appeal: Aviva was argue the catastrophic should be met for all 4 criteria, not only one</p> <p>The court to determined 1 is it under the standard review 2 is it only one function can contribute the CAT definition</p> <p>The decision of the appeal, the case should defined as CAT loss and the indemnity should pay to Pastore.</p> <p>Sample answer to almost get full credits:</p> <p>Kusnierz vs Economical</p> <p>Here it was looking at a catastrophic impairment where it was required 55% to be declared a catastrophic impairment.</p> <p>The trial judge rules that the insured wasn't catastrophically impairment as the separate physical and mental impairment considered separately do not need the 55% threshold. The SABs did not outline that if it should be considered together and physical or mental should have been considered together, the document would have explicitly said so.</p> <p>This was overturned on appeal which said that because it didn't specify we can read it from the natural ready that they can be considered together and the insured did qualify for a classification of a catastrophic impairment.</p> <p>The impact is that mental and physical impairment should be classified together in determining whether something is categorized as a catastrophic impairment. This might means slightly more people being categorize as such, but because of the rarity of the cases to begin with, this is not a significant increase, and will not have dramatic increases</p>	

SAMPLE ANSWERS AND EXAMINER'S REPORT

in insurance rates etc... It can also be seen as more fair and in line with modern values.

EXAMINER'S REPORT

Candidate did poorly on this question. These are recent cases and candidate should be more knowledgeable about them. Most people were able to obtain partial credits but it's mainly the lack of information that restricted awarding credits. The question hinted at what we were looking for (fully describe impact, original court decision, subsequent appeal decision) but candidate only provided partial information.

Some candidates confused the cases with the trilogy which is related to the cap on pecuniary damages.