



## COMPENSATION FOR PERSONAL INJURIES IN ALBERTA

### “THE WHIPLASH CAP”

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With effect from October 1st, 2004, the Alberta Government decided that compensation for pain and suffering associated with most whiplash injuries caused in a motor vehicle accident would be worth a maximum of \$4,000.00. If the accident had occurred on September 30th, 2004 the courts were likely to hold that compensation payable would be significantly more - perhaps \$10,000 - \$15,000.00 - \$20,000.00 depending upon the severity of symptoms.

In the summer of 2006, lawyers in Calgary acting for Plaintiffs Morrow & Pederson, successfully challenged the CAP (as it has become known) and (effectively) abolished it. Not surprisingly, lawyers for the Insurance lobby appealed the Calgary decisions. Sadly, the Court of Appeal overturned the decision of the Judge at first instance and reinstated the CAP.

The argument was that a Cap on such injuries had successfully reduced insurance premiums for the average Albertan. Unfortunately, the cost of those savings fell upon one category of victims i.e. those with whiplash injuries. One could argue that the Alberta Government might have decided that all motor vehicle accident victims who had suffered, say, a paraplegia injury could have had their damages capped at \$4,000.00 so as to save the average Albertan insurance premiums! No doubt there would have been an outcry in such circumstances, yet the principle is the same - the Alberta Government had decided that a section of society (in this case whiplash victims) will subsidize insurance premiums, seemingly for the greater good.

The Supreme Court decision not even to grant leave to appeal the Court of Appeal ruling effectively puts an end to the argument, unless and until a further challenge is raised on other grounds or the legislation is repealed/amended. This means that, all law firms in Lethbridge and throughout the Province of Alberta are bound by the CAP and its limit on compensation for pain and suffering. If it is any compensation to the whiplash victims of Alberta, the \$4,000.00 cap is increased periodically for inflation - the compensation figure now stands at \$4,504.00.

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