

bringing his case to trial.

Assumption in the above 2 example calculation.

1. Medical treatment charges pre-AB settlement date are not considered as part of the award for pain and suffering.

However, if the assumption is reversed, then the calculation for the pain and suffering award would be as follows:

Case 1B

AB award = \$6,000.

Medical treatment expenses = \$7,000.

Pain and Suffering award before deduction = \$19,000.

Cash payout to plaintiff after deduction

= \$ 19,000 – (\$5,000 + \$7,000.)

= \$ 7,000.

A case won by plaintiff.

Case #2B

AB cash award = \$20,000.

Medical treatment expenses = \$7,000.

Cash payout to plaintiff

=\$19,000 -\$27,000

=\$-8,000.

An effective case lost for the plaintiff.

The advantage of this approach:

1. **Case-by-case adjustable.**
The final cash award reflects more closely on the actual losses of the victim(s).
2. **It eliminates the rigidity imposed by the current amount legislated into law.**
3. **A transparent compensation system. The victim(s) would not be left with a feeling for**

vagueness of rationale for the existing rigid deduction amount, or as proposed in Reference 1.

4. It protects the insurer(s) from overpaying the victims in the form of redundant coverage between the 2 insurers. This way, the cost to the insuring companies and the insurance industry as a whole would be minimized.
5. A better feeling of justice accomplished by both the insurer(s), and the insured.

Other Possible Issues on pain and suffering claims cases:

1. Possible Data "Mis-handling" and Prevention 1: The latent problem lies in the fact that the OHIP billing system is computerized. To enter data from the clinical notes of physicians, into the OHIP computer system, some personnel is needed. Mistakes, and other problems can arise at that point of the system.

As a plaintiff recently, I realize that my data were wrong in my treatment at a clinic, where my treatment of one visit was duplicated more than 10 times. As the pre-trial judge glanced over the computer print-out of that part of my medical record, she incorrectly inferred that I had a chronic problem prior to the accident.

As a result, a lower value was proposed, which was somewhat below a value otherwise would be obtained if the judge was fully informed on my OHIP medical data.

2. Possible Data "Mis-handling" Prevention 2: Another example of wrongly entered data in the OHIP printout, it was entered that I had certain symptoms, such as sprain and strain, which were not indicated in the emergency room clinical notes of the doctor on duty.

Reference:

1. OTLA: 5 year review of the Deductible in Pain and Suffering
2. ICBC documents
3. OFSC documents
4. other documents

Projected savings/profits

If the case 1A is most likely the scenario for most of the cases that go to trial, \$14,000 should be the award for the victim, and say 20% go to the trial lawyer, that is \$2,800. saving for the lawyer, 10 cases mean a profit of \$28,000.

The awards total up to \$140,000. in 10 cases. Of course, this amount goes up very quickly for larger

cases, and when adopted and used on a provincial scale.