

SHARE PERSPECTIVES

a newsletter for
clients and friends of
David Share Associates,
Lawyers

In This Issue:

Critical Illness Insurance

In Person1

Team Profile2

Did you know? ..2

Smile2

Ask-A-Lawyer ...3

You Said It!3

Stats Canada

Study4

Gratitude4

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DAVID SHARE
ASSOCIATES • LAWYERS

We make a personal injury
and disability claim as
painless as possible.

In Person

Karen Bartlett – Office Manager

As a single mother and office manager, Karen Bartlett has always been attentive to details. Even after she received confirmation that a small lump in her breast was cancerous, Karen stood by her responsibilities to her child and her employer with attention to detail.

Stress and hope of relief

The lump in her breast was detected in an annual check-up and mammogram. The diagnosis came in May, 2005. Karen then became consumed with concern that her son might not be able to depend on her in the future. She found relief, though, in knowing that she had critical illness insurance that could provide a lump-sum payment in the event of a critical illness.

Claim denied

Karen applied for her critical illness benefit in June, 2005. Her insurance company asked her to authorize release of her medical records, which she did. Then, in September, 2005, the insurance company denied her claim because of “material misrepresentation.”

“Material misrepresentation”

The letter from the insurance company was vague. It said that the information received from her doctor made it clear that she had medical conditions which she failed to disclose. They said that, when she applied for the insurance in 2003, she answered “no” to medical questions to which she should have answered “yes.” Had she advised them of her prior medical history, they said, they would never have issued the policy. She didn’t know what to do.

Referral from a friend

A close friend told her about David Share Associates and suggested she see if they could help. Hopeful of finding an ally, Karen contacted DSA and booked an appointment. She was relieved to find out that DSA works on a contingency-fee basis, not requiring any up-front money to pursue her claim. DSA warned her, though, that claims over critical illness insurance are seldom as straight forward as they seem.

Doctor’s notes

Once DSA started probing the evidence, it became apparent that the insurance company’s denial focused on a remark in Karen’s family



doctor’s notes about a small lump in her breast. Her doctor had noted to monitor it.

Karen’s memory vs. Doctor’s memory

The doctor’s notes – dated prior to her taking out the insurance – indicated that the lump had been mentioned to her. Karen did not recall the lump being mentioned to her. In the DSA investigation, the doctor did not recall whether the discussion with Karen had occurred. The insurance company, however, wanted to rely on the doctor’s notes.

Fraud tough to prove

The case ultimately settled on a compromise. With neither Karen nor her doctor recalling the noted discussion, the insurance company recognized the risk of losing the case and having to pay out the full critical illness benefit. Karen also recognized that, because her recollection and her doctor’s notes differed, she risked losing the case. The turning point was the fact that fraudulent misrepresentation would be tough for the insurance company to prove.

Mother and son recover

With the benefit payment that Karen received, she got the resources for the cancer treatment she needed without significantly compromising her family lifestyle. She was freed to focus on her treatment and recovery, and her cancer went into remission. Karen has since been able to get on with her career and life with her son, taking care of the details that are important to her.

All names have been changed to protect the privacy of the individuals mentioned.

Team Profile: Carol Tam, Law Clerk



photo of clay doll

Carol Tam has a penchant for artistic imagination in her spare time. Her creative side finds satisfaction with watercolours and Chinese paintings, as well as clay dolls with big noses – lovingly inspired by her closest family. Carol's artistic creativity complements her clinical and legalistic pursuits as a DSA team member.

Medical and legal expertise

Carol's role on the DSA team draws upon her medical and legal qualifications. She is a Registered Nurse as well as an Associate Member of the Institute of Law Clerks of Ontario. Her responsibilities to DSA clients include reviewing medical documentation and information in files, summarizing medical records, updating clients' medical information, and requesting additional medical information and follow-ups. She

finds it satisfying to draw upon her medical and legal knowledge in service to people who have been hurt or wronged.

Heartfelt service

Proud to be a DSA team member, Carol says, "Through our coordination, we handle files efficiently to help settle our clients' claims effectively." The outcome: "It is wonderful when clients receive their settlement funds. That is a bonus to us."

From happy clients to clay dolls

Carol also finds client referrals and testimonials heartening. "Through client comments, our efforts are recognised and confirmed. They're satisfied. This is the ultimate goal." Then, when her work day is over and family happy, Carol returns to her paintings and clay dolls with big noses. 

Did You Know...

Wrongful Dismissal and Human Rights

In December, 2006, Ontario Attorney General Michael Bryant announced passage of Bill 107, the Human Rights Code Amendment Act, 2006. Major legislative changes occurred just before its passage. Altogether, the result is a major shift in how employers and employees litigate wrongful dismissal claims.

Since 1997

A 1997 Supreme Court of Canada decision determined that employers who demonstrate bad faith, ill intent, malice, or blatant disregard for employees when firing them could be liable for extended damages. Such claims have now become mainstays of wrongful dismissal suits.

Now in Ontario

Plaintiffs now have a much greater ability to seek compensation in wrongful dismissal suits. Under the new law, Ontario judges now have the power to order reinstatement, to force employers to provide letters of reference, and even to make them post letters of apology in the workplace or the media. Ontario courts can also award human rights damages based on harm done to the employee.

Employment Law Shifts, National Post, Jan. 17, 2007 

"Moral excellence comes about as a result of habit. We become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts."

– Aristotle

Smile

There was a woman who woke up one morning, looked in the mirror, and noticed that she had only three hairs on her head. "Well," she said, "I think I'll braid my hair today." So she did, and she had a wonderful day.

The next day she woke up, looked in the mirror and saw that she had only two hairs on her head. "Hmm," she said, "I think I'll part my hair down the middle today." So she did, and she had a grand day.

The next day she woke up, looked in the mirror and noticed that she had only one hair on her head. "Well," she said, "Today I'm going to wear my hair in a pony tail." So she did, and she had a fun, fun day.

The next day she woke up, looked in the mirror and noticed that there wasn't a single hair on her head. "Yeah!" she exclaimed, "I don't have to fix my hair today!" 

Ask-A-Lawyer

Q: What if I've been to my doctor, but still don't have an actual diagnosis? Can I still make a claim for benefits?

A: If your claim has been denied because the insurance company says that there is insufficient medical information to prove your claim, then you should get a lawyer to challenge that. The absence of a specific diagnosis does not mean that you lack real symptoms constituting entitlement to benefits or compensation.

Q: What if my own family doctor, who has known me for years, disagrees with the insurance company's medical specialist?

A: Your family doctor might feel intimidated by a specialist who has examined you for an insurance company. Still, you can ask your family doctor to refer you to a specialist in the same field as the insurance company's expert, or in the most appropriate specialty for your condition. The combination of a supportive family doctor and a

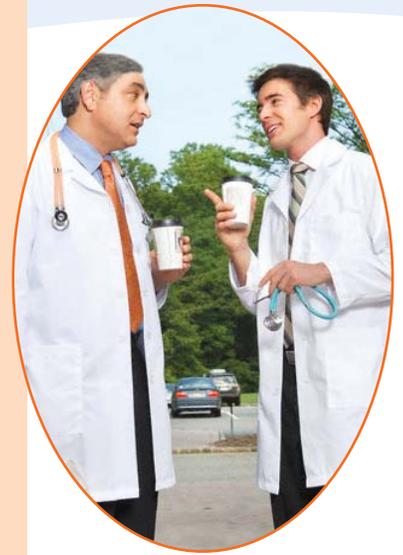
specialist who agrees with your family doctor's findings is persuasive and you have a good chance of winning against the insurance company.

Q: You say that you only get paid if my case wins? How do contingency fees actually work?

A: Contingency fees mean that payment of legal fees is contingent or dependent upon success – recovery of compensation or benefits. In many cases, the insurance company will contribute toward part of your legal costs, helping to cover the total legal fees your case incurs. We really do not charge any fees unless we recover money from the parties pursued in the claim.

Share Perspectives readers are invited to write in with questions for *Ask A Lawyer*. Watch future issues for questions from your fellow readers. One question per person. Send your question to:

AskALawyer@sharelawyers.com 



Patient: Doctor, I have a serious memory problem. I can't remember anything!

Doctor: Since when have you had this problem?

Patient: What problem?

You Said It!

“It was a pleasure to work with your firm during a difficult time in my life.”
– Aaron D. (disability claim)

“The settlement you won for me has helped me to get out of an unpleasant situation and to get back on my feet again. I can't thank you enough.”
– Catherine H. (slip-and-fall claim)

“If David Share agrees to take your case, consider yourself in very capable hands.”
– Harley A. (disability claim)

“Thank you for all the advice, for keeping in touch throughout the process and giving me hope at reasoning with a HUGE insurance company. I am just a number to them (Sunlife), but was NEVER treated as a number, or as a case file, by anyone at David Share Associates.”
– Kerry C. (disability claim) 





Stats Canada:

Study of Medically Unexplained Physical Symptoms (2002-03)

A large number of Canadians report symptoms of conditions not identified through physical examination or medical testing. These are known as medically unexplained physical symptoms. They characterize conditions such as chronic fatigue syndrome, fibromyalgia, and multiple chemical sensitivity.

One in twenty people

A new Health Reports study, Medically Unexplained Physical Symptoms, reveals that in 2003, 5% of Canadians age 12 or older – about 1.2 million people – had at least one of these three conditions.

The top three

About 1.3% of the population reported the extreme tiredness of chronic fatigue syndrome. About 1.5% reported pain that lasts three months or more in specific areas: fibromyalgia. About 2.4% reported multiple chemical sensitivity. People with this disorder develop a variety of

symptoms when exposed to synthetic chemicals in doses that usually have no noticeable effect.

Especially low-income women

Among individuals with medically unexplained physical symptoms, about 14% had at least two of these three conditions. Data from the 2003 Canadian Community Health Survey show that the number of women with each of these conditions was about double that of men. Also, each of the three conditions was more common among people of lower income than among those in the highest-income households.

The article Medically Unexplained Physical Symptoms appears in Health Reports, Vol. 18, No. 1 from Statistics Canada.

The National ME/FM Action Network advocates the interests of people suffering from Myalgic Encephalomyelitis (Chronic Fatigue Syndrome) and Fibromyalgia through education, advocacy, support and research. www.mefmaction.net 

Gratitude

David Share Associates (DSA) is a leading Toronto personal injury and disability claim law firm. DSA concentrates on serious injuries, death claims, insurance disputes, and disability coverage disputes in Ontario. Following an accident or illness, DSA helps people to get the support they need and deserve.

We care enough to stand by you through your claim and after your settlement. Share Perspectives is one way we keep in touch.

We also respect your confidentiality. If you want us to add or remove your name and address from the Share Perspectives mailing list, send an e-mail to newsletter@sharelawyers.com When you recommend DSA, that is our best advertising. 



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