
# STOPPING A SLIPPERY SLOPE: ONTARIO DIVISIONAL COURT CLARIFIES THAT AUTO INSURANCE COVERAGE APPLIES ONLY TO DIRECT CAUSES OF INJURIES

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The extent to which automobile insurance policies apply to incidents is often a question of causation: did the use or operation of the vehicle directly cause the plaintiff's loss? The Ontario Divisional Court in *Porter v. Aviva Insurance Company of Canada*[1] recently examined this issue in the context of injuries from a slip and fall over icy conditions. It clarified that, despite finding "but-for" causation, injuries from walking towards an automobile did not count as "use or operation of an automobile", from which automobile insurance benefits could be accessed.

**Facts**

The plaintiff called a Lyft rideshare to take her from her parents' house to a medical appointment. The car pulled part way up the house's driveway, which was icy and unshoveled. The plaintiff touched the car's hood to stabilize herself on the ice as she approached and then fell and injured her leg. She made a claim to her automobile insurer Aviva Insurance Company of Canada ("**Aviva**") for benefits under the Statutory Accident Benefits Schedule[2] ("**SABS**").

Aviva denied her claim, finding that the incident did not qualify as an "accident" under the SABS. The plaintiff appealed to the License Appeal Tribunal (the "**LAT**"), who adjudicated the claim in her favour. Aviva requested that the LAT reconsider its decision and it upheld its previous decision. Aviva then appealed to Divisional Court.

**Analysis**

The Divisional Court found that the SABS did not cover the plaintiff's injuries. A two-part test determines whether an incident is considered a covered "accident" under the SABS:

1. Did the incident arise out of the use or operation of an automobile?
2. Did such use or operation of an automobile directly cause the impairment?

The Divisional Court disagreed with the LAT's finding that use and operation of the car was a direct cause of the

impairment under the second part of the test. Although it found that the plaintiff passed the "but-for" test (determining whether the accident would have occurred absent the car's presence), this was insufficient to fully determine causation. Instead, it found that it must determine the direct cause of the accident, which in this case was the icy driveway. That the plaintiff came to the incident's location because of the car was insufficient alone to show causation. The Divisional Court found that, "at best," the plaintiff's use and operation of the car was ancillary to her injuries.[3]

**Key Takeaways**

This decision qualifies the application of insurance benefits under the SABS and gives clear judicial guidance:

- Auto insurance only covers automobile incidents involving damage if they meet the SABS's definition of "accident".
- The SABS will not cover injuries caused by indirect "use or operation" of automobiles.
- "But-for" causation alone is not always enough to show that use or operation of an automobile directly caused a coverable "accident" under the SABS. Instead, the question is whether the plaintiff's use or operation of the car directly caused the plaintiff's loss.

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[1] [ps2id id='1' target='']2021 ONSC 3107 [Porter].
[2] [ps2id id='2' target='']O Reg 34/10 made under the Insurance Act, RSO 1990, c I.8.
[3] [ps2id id='3' target='']Porter, supra note 1 at para 16.

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