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Funeral expenses mandated by Nova Scotia policy

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For the first time, the Supreme Court of Nova Scotia has rendered a decision on the statutory interpretation and accident benefit provisions of Section B of the Nova Scotia Standard Automobile Policy. In rendering its decision, the court ended a standoff between decisions previously handed down in the other two Maritime Provinces.

"There was uncertainty with respect to the interpretation of the no-fault Section B provisions of the Nova Scotia Standard Automobile Policy as to whether funeral expenses were limited to \$1000 in circumstances where no death benefits were payable by the Section B insurer," Michael Brooker, a lawyer with Burchell MacDougall in Wolfville, NS, and counsel for the applicant, told The Lawyers Weekly.

A PEI Court of Appeal decision, *Reeves Estates v. Phoenix Assurance Co. of Canada*, 1986, suggested that the entitlement to funeral expenses in these circumstances was not limited to \$1000. The New Brunswick Court of Queen's Bench in *Trail (Estate) v. Commercial Union Assurance Co. of Canada* in 1995 came to the opposite conclusion. "The existing decisions provided conflicting authority. The matter had not been judicially considered in Nova Scotia, and no court had tried to rationalize the conflicting decisions," Brooker noted.

"Justice [Gregory] Warner analyzed the conflicting case authorities and has clarified that, in fact, the entitlement to funeral expenses is indeed limited to \$1000 irrespective of whether or not Section B death benefits are payable," he added.

Relying on *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC and *Glykis v. Hydro-Quebec*, 2004 SCC 60, the Nova Scotia court determined that the wording of Section B is mandated by government regulation and that *contra preferentum* does not apply. It found no additional funeral expenses were payable beyond the \$1000. However, the court concluded that funeral expenses were not limited to the cost of the ceremony but included all reasonable expenses connected with the ceremony and burial.

The decision will have implications beyond Nova Scotia, said Pamela Large-Moran, counsel for the respondent and principal of CRS Atlantic in Charlottetown, PEI:

"The court concluded that the doctrine of *contra preferentum* has no application to legislatively mandated policy wording and further that the rule of interpretation that insurance coverage should be construed broadly and exclusions narrowly only applies

where an ambiguity has been found or in situations where the wording was created by the insurer. Such conclusions can be argued in other insurance cases across the country in appropriate circumstances."

In addition, she said, "In the Atlantic Provinces, the auto policy wording is essentially the same in all four provinces. Ontario did have the same policy wording prior to 1990. There may be other provinces as well that continue to have the same policy wording."

Reasons: *Miller Estate v. Co-Operator's General Insurance Co.*, 2005 NSSC 260, [2002] B.C.J. No. 1188.