



[Home](#) > [Online Application](#)

**File Format:**

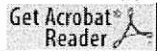
This document is available in Acrobat PDF format (v3.0 minimum).

If you have Acrobat Reader, simply click on this icon to download the decision in a format which closely matches the original decision. **(Printing this decision directly from your browser does not preserve the format of the original decision. Please use Adobe Acrobat to create and print the decision in a format closely resembling the original decision).**



Sollazzo.pdf

A FREE copy of the software required to view Acrobat PDF files is available here for downloading.



**Financial Commission des  
Services services financiers  
Commission de l'Ontario**

**OFFICE OF THE DIRECTOR OF ARBITRATIONS**

BRUNO SOLLAZZO

and

ZURICH INSURANCE COMPANY

Appeal P99-00054

Appellant

Respondent

BEFORE: David R. Draper, Director's Delegate

COUNSEL: Luigi DiPierdomenico (for Mr. Sollazzo)  
J. Claude Blouin (for Zurich Insurance)

**APPEAL ORDER**

Under section 283 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, **it is ordered that:**

1. The appeal brought by Bruno Sollazzo from an interim arbitration decision, dated September 29, 1999, is rejected under Rule 47.2(b) of the *Dispute Resolution Practice Code—Third Edition*.
2. No appeal expenses are payable.

November 9, 1999  
David R. Draper  
Director's Delegate

Financial Services Commission of Ontario  
Sollazzo and Zurich  
Appeal Order P99-00054

## REASONS FOR DECISION

### I. NATURE OF THE APPEAL

This is an appeal by Bruno Sollazzo from an arbitration order, dated September 29, 1999, denying his claim for interim benefits. Because the appeal is from an interim order, leave is required. Rule 46.2 of the *Dispute Resolution Practice Code—Third Edition* states: "A party may not appeal a preliminary or interim order of an arbitrator until all of the issues in dispute in the arbitration have finally been decided, unless the Director orders otherwise." The question addressed in this decision is whether the appeal should be allowed to proceed.

### II. BACKGROUND

Mr. Sollazzo was injured in an automobile accident on December 12, 1995. As a result, Zurich Insurance Company ("Zurich") has paid him various accident benefits under the *SABS-1994*, Ontario Regulation 776/93, as amended, the *Statutory Accident Benefits Schedule - Accidents after December 31, 1993 and before November 1, 1996*.

In April 1999, Mr. Sollazzo and his wife booked a flight to Italy on September 7, 1999, to visit his family. In late June 1999, Mr. DiPierdomenico, Mr. Sollazzo's lawyer, wrote to Dr. Carol Franklyn, the clinical psychiatrist treating Mr. Sollazzo, asking her for a status report. Dr. Franklyn responded by letter dated July 22, 1999. She wrote that due to the effects of his traumatic brain injury, Mr. Sollazzo required supervision and should not travel alone. She confirmed her earlier advice that he needs to leave his community periodically, "if for no other reason than to distract himself from the constant reminders of his accident and the TBI [traumatic brain injury] sequelae." She then recommended that if he travels a long distance, such as outside the country, he needs to be seated in the least stimulating area, which is usually first class.

Finally, Dr. Franklyn wrote as follows:

In terms of accommodation, he will also require a place to which he could "withdraw" or retire as necessary. I have communicated to the Sollazzos that they should stay at a hotel if travelling to see family in Europe, since the inability to "escape" the stimulation of large groups would negatively impact Mr. Sollazzo's functioning.

Mr. DiPierdomenico then wrote to Zurich by fax, notifying them for the first time about the trip and asking for funding for the upgrade to first class and for hotel accommodation. On the same day, Mr. DiPierdomenico applied for mediation.

On July 28, 1999, Ms. Frances Cleary of Zurich responded by letter to Mr. DiPierdomenico, enclosing a copy of her request for a Disability Certificate that she sent directly to Dr. Franklyn for a statement that the expenses were reasonable and necessary. In addition, Ms. Cleary enclosed an OCF-14, Permission to

Disclose Health Information to the Designated Assessment Centre, because she was requesting a DAC assessment. Dr. Franklyn completed the Disability Certificate and returned it to Zurich by mid-August 1999.

Because Mr. Sollazzo was due to leave for Italy, the mediation proceeded on an expedited basis, but did not resolve the dispute. According to the Report of Mediator, dated September 2, 1999, Zurich objected to the process. It claimed that Mr. Sollazzo was not entitled to proceed because his claim had not yet been formally denied and he had not complied with its request for a DAC assessment.

Mr. Sollazzo's *Application for Arbitration* was received on September 3, 1999, four days before he was scheduled to leave the country. Zurich responded, arguing that the application was premature. In Zurich's submission, it had attempted to follow the procedures in the *SABS-1994*, but the short time frame and the actions of Mr. Sollazzo and his lawyer prevented a timely DAC assessment.

A telephone conference was scheduled for September 9, 1999 to deal with Mr. Sollazzo's request for interim benefits. By this time, Mr. Sollazzo was in Italy. The hearing proceeded by way of documents and the submissions of counsel, although Mr. Sollazzo was available by telephone if necessary.

The arbitrator released his decision on September 29, 1999. First, he rejected Zurich's argument that Mr. Sollazzo was not entitled to proceed because he had failed to make himself reasonably available for the DAC assessment. The arbitrator found that Zurich did not follow the proper procedures for requesting the DAC assessment and, therefore, Mr. Sollazzo was not in breach of his obligations.

The arbitrator also accepted that Dr. Franklyn's certificate was sufficient although it does not specifically state that the expenses claimed are reasonable and necessary for Mr. Sollazzo's treatment or rehabilitation. He was prepared to read the certificate broadly because Zurich sent it directly to Dr. Franklyn rather than asking Mr. Sollazzo to provide it.

Turning to the merits of the claim, the arbitrator was not persuaded that the expenses could be considered medical treatment under Part VII of the *SABS-1994*. However, he felt that the claim might fit under Part VIII as reasonable measures "to reduce or eliminate the effects of any disability resulting from the impairment." In denying Mr. Sollazzo's claim for interim benefits, the arbitrator stated as follows:

. . . I have difficulty understanding why he could not escape large groups while staying with relatives. Surely other accommodations could have been made.

Whatever the merits of Mr. Sollazzo's case, I find that he has not shown the need, necessity, or a sense of urgency in his request. If indeed economy-class travel and accommodation with relatives was so risky for him, he did not have to go. The "emergent situation," as Mr. DiPierdomenico put it, arose through Mr. Sollazzo's own actions. Indeed, as Mr. DiPierdomenico expressed the matter to the Commission in his letter dated September 3, 1999: "[Mr. Sollazzo] will have the three (3) weeks visit with his relatives and family and this will be done whether Zurich honours its obligations to pay accident benefits or not at the proverbial risk of Mr. Sollazzo killing himself." (p.6)

Mr. Sollazzo seeks to appeal the resulting order that he is not entitled to interim benefits.

### III. ANALYSIS

Mr. Sollazzo points to one factual error. The decision states that his claim was for the extra expense of upgrading his and his wife's airline tickets to first class and the cost to *two* hotel rooms. Mr. Sollazzo

submits, however, that he only claimed the cost of one hotel room. I note that Zurich's material suggests that it believed the claim was for two hotel rooms. In any event, I am not convinced that this misunderstanding had any effect on the arbitrator's decision.

To summarize his other submissions, Mr. Sollazzo contends that the arbitrator failed to appreciate the medical evidence, establishing the need for his trip to Italy, and the urgency involved in making the necessary arrangements in time for his departure.

As stated above, the general rule, established in Rule 46.2 of the *Dispute Resolution Practice Code*, is that appeals from preliminary or interim orders are not allowed. Its purpose is to avoid delay and to minimize the complexity and cost of proceedings. In my view, the appeal decisions reflect an appropriate reluctance to intrude in the arbitration process, but a willingness to do so in circumstances where it is likely that allowing the appeal to proceed will streamline the process in some way. For example, see *Tesfay and Allstate Insurance Company of Canada*, (FSCO P99-00023, June 21, 1999); *Bouassali and Zurich Insurance Company*, (FSCO P98-00039, November 20, 1998); and *Glynn and General Accident Assurance Company*, (OIC P98-00085, March 17, 1997). This would include situations where there is a clear error in the decision, or the appeal presents a strong argument on a key issue, making it likely that time and resources would be wasted if the appeal was not decided first. As stated in Rule 1.1 of the *Dispute Resolution*

*Practice Code*: "These rules will be broadly interpreted to produce the quickest, most just and least expensive resolution of the dispute."

In this case, I am not persuaded that the appeal should be allowed to proceed. Despite efforts to act quickly, the arbitrator did not hear the motion for interim benefits until Mr. Sollazzo had already left the country. While delay should not be used to frustrate an insured person's claim, the arbitrator was not persuaded that it what happened here. Nor am I. Now that Mr. Sollazzo presumably has returned to Canada, it is my view that the dispute is best addressed in a full arbitration hearing. This will allow the parties to present evidence relevant to their disagreements about the handling of this claim. Until then, the appeal is premature.

November 9, 1999  
David R. Draper  
Director's Delegate



To view PDF files, you will require Adobe Acrobat® Reader version 7.0. You can download this free software from [Adobe's Web site](#).

