



OHIP seeks to appeal COVID billing ruling

We were frustrated to learn last week that OHIP has asked the Ontario Court of Appeal for permission to appeal the recent Divisional Court decision in the case involving Dr. Elaine Ma.

Last month, we shared news of the Divisional Court's significant ruling that clarified how OHIP's billing rules and statutory discretion apply in extraordinary circumstances. While the court acknowledged that Dr. Ma did not meet OHIP's billing requirements, it emphasized that OHIP has discretion under the Health Insurance Act to show flexibility in exceptional circumstances, such as a global pandemic.

What the court decided

- OHIP must pay Dr. Ma \$10,000 in legal costs
- The matter must be sent back to HSARB for reconsideration of the repayment amount, rather than proceeding on the assumption that a full clawback is automatically required

Why the ruling matters

- Decision-makers must apply OHIP's rules in a manner that allows for statutory discretion, particularly in exceptional circumstances
- It recognizes the realities physicians faced when responding to urgent public health demands during the COVID-19 pandemic
- It affirms that fairness in the compensation framework requires case-specific assessment rather than automatic outcomes

What's next

We believe the court is unlikely to grant OHIP permission to appeal because the ruling focused on pandemic-era facts, but there is some risk. Seeking leave is not an appeal on the merits. If permission is denied, the decision stands. If granted, it means that the appeal will be heard — not that OHIP will succeed.

We have heard from many of you about the challenges you are facing with OHIP, and we will continue to advocate across multiple fronts for fairness in how OHIP's rules are applied.