
**PROMISES, PROMISES: SASKATCHEWAN COURT OF APPEAL
DECIDES HOW TO CALCULATE DISABILITY BENEFITS
WHERE CLAIMANT HADN'T STARTED NEW JOB**

Reported Case:	Montgrand v. Saskatchewan Government Insurance
Citation:	2007 SKCA 103
At Issue:	Are income replacement benefits (“IRB”) to be calculated on basis of previous employment history or amounts, which would have been earned in prospective employment set to start within 180 days of the accident? Are IRB to be reduced by employment insurance (“EI”) benefits received during the first 180 days? Are EI benefits to be taken into account when calculating IRB amounts after the initial 180 day period?
The Court:	Saskatchewan Court of Appeal
Judgment Rendered:	October 1, 2007
Factual Summary:	Plaintiff involved in accident and seriously injured in late July 1998. At time of accident plaintiff was unemployed and in receipt of EI benefits. Before accident plaintiff had accepted a full-time job scheduled to commence in mid-August, paying \$17 per hour. Plaintiff applied for IRB during 180-day elimination period per s. 116(1)(a) of the <i>Automobile Accident Insurance Act</i> . Following expiry of 180 day period, plaintiff’s benefits reduced.
Disposition By Lower Court:	Trial judge found that IRB must reflect reality. Plaintiff would have worked 90 of the 180 days following accident. No requirement to include EI benefits in the calculation of gross yearly income under the regulations.
Appellate Decision:	Trial judge correct with respect to findings about work history; government insurer did not pay IRB until cessation of EI benefits. EI benefits are not to be taken into account when calculating yearly income. Determination of entitlement to IRB in 180 day period based on nature of employment opportunity, evidence of expressed intention to work during the period, and work history. Plaintiff was owed the difference between IRB amount and EI amount. EI benefits for a seasonal worker could be considered in calculating an earner’s gross yearly income, but not where there is no information about whether the benefits were obtained through voluntary choice not to work.