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ACCIDENT BENEFITS IN ONTARIO

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This service provides in-depth guidance to the *Statutory Accident Benefits Schedule* in Ontario with summaries and analysis of case law with respect to arbitration decisions from the Licence Appeal Tribunal (L.A.T.), relevant judicial decisions and private arbitration decisions. Case digests are available online with links to the full-text decisions. Subscribers also receive the **Accident Benefits in Ontario Newsletter**, a monthly current awareness resource e-mailed to you directly.

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What's New

This release features new case law and commentary as well as updates to legislation to the following chapters: 2 (Annotated S.A.B.S. – 2010); 5 (Licence Appeal Tribunal); 9 (Disputes Between Insurers); 10 (Loss Transfer), and Appendix A (Statutes).

Highlights

In *SGI Canada Insurance Co. and Old Republic Insurance Co., Re*, 2024 CarswellOnt 19489 (Ont. Arb. (Ins. Act)) (November 28, 2024, Ken Bialkowski), there is a helpful review of solicitor client privilege in the context of orders for the production of legal opinions in loss transfer cases where the reasonableness of payments is in issue.

In *Martin v. Certas Home and Insurance Co.*, 2025 ONSC 665 (Ont. Div. Ct.), the court reviewed s. 45 of the SABS which addresses catastrophic impairment assessments. The section states that catastrophic impairments "shall be conducted only by a physician but the physician may be assisted by such other regulated health professionals as he or she may reasonably require" (s. 45(2)1)).

The court found that the chiropractor in *Z.J. v. Aviva*, 2020 CanLII 98733 (Ont. L.A.T.) "was engaged in a compilation exercise and **not** in generating additional opinions that were beyond the scope of their expertise" (para. 40).

In *Baskaran v. Security National Insurance Company*, 2025 ONSC 1014 (Ont. Div. Ct.), it was found that Mr. Baskaran had not "identified any errors in the Adjudicator's dismissal of his chronic pain claim in the reconsideration decision" (para. 33). The court found that the applicant was "seeking to have this Court reinterpret the evidence presented at the hearing because he disagrees with the outcome. Reviewing courts must not reweigh and reassess evidence" (para. 33). The application was dismissed with the applicant to pay $10,000, all-inclusive, to the insurer.

In *Petch v. TD General Insurance Company*, 2025 CarswellOnt 1641 (Ont. L.A.T.) (February 12, 2025, Deol) (Reconsideration Decision), the applicant requested a reconsideration pursuant to Rule 18.2 of the *Common Rules of Practice and Procedure*. The applicant's request was granted and a re-hearing on the preliminary issue was ordered based on the existing written record. The re-hearing of the preliminary issue was to take place within 60 days of the date of the release of the reconsideration decision. A five-day videoconference was scheduled for the substantive issues in dispute.

The adjudicator noted that "the test for reconsideration under Rule 18.2 involves a high threshold" (para. 7). Furthermore, the "reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence" (para. 7).

The adjudicator was bound by the Divisional Court in *2541005 Ontario Ltd. v. Oro-Medonte (Township), et al*, 2023 ONSC 5569. In that case, the court defined an interlocutory decision as follows (at para. 13):

a. "If the merits of the case remain to be determined"...
b. "Does not finally dispose of the appellant's accident benefits application, nor does it dispose of any substantive issue or claim in that proceeding"...
c. "Where the effect of an order is to continue the inquiry, it is not final."

In applying the criteria, the adjudicator with the applicant that her decision had been "a final decision" (para. 14). The adjudicator had not ordered a stay of the proceedings. The applicant was barred from proceeding forward with the application under s. 55 of the Schedule (para. 15). The adjudicator found that the applicant had "established grounds for reconsideration under Rule 18.2(b)" because it was an error "in law when [the adjudicator] reversed the onus under s. 44(9)2(i) onto the applicant" (para. 19).