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ACCIDENT BENEFITS IN ONTARIO

Catherine H. Zingg Originally co-authored by the late James M. Flaherty Release No. 2025–5, December 2025

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); 4 (Table of Special Awards); 5 (Licence Appeal Tribunal); 5A (Former Licence Appeal Tribunal Rules (pre–August 2023); 9 (Disputes Between Insurers); Appendix A (Statutes), and Appendix B (Regulations).

Highlights

In this release, several decisions considered whether applicants met the definition of Catastrophic Impairment under s. 3.1 of the SABS. In *Ashkani v. TD General Insurance Company*, 2025 CarswellOnt 14067 (Ont. L.A.T.) (August 28, 2025, Moini, Hines), the adjudicators found that the applicant had not sustained a catastrophic impairment under Criterion 8 of the *Schedule*.

The respondent argued "that the accident was not the cause of the applicant's psychological impairments" which formed the "basis of her application for CAT status" (para. 10). The applicant had a "lengthy history of psychological illness and has been diagnosed with bi-polar disorder, personality disorder and attention-deficit/hyperactivity disorder ('ADHD') which all had a significant impact on her pre- and post-accident function" (para. 10). She also had a number of physical issues before the accident, including spinal decompression surgery.

The adjudicators concluded that "the accident was not a necessary cause of the applicant's psychological impairments which formed the basis for her application for CAT status" (para. 22). In the alternative, it was found that "the applicant did not sustain a CAT impairment as a result of the accident because we do not accept Dr. Shahmalak's marked impairment rating in the sphere of adaptation" (para. 22). The clinical notes and records of Dr. Collerton and a nurse had clearly stated that the applicant had "enrolled in schooling which included a 105-hour course to obtain her AZ licence for trucking" (para. 19 (iii)). The other claims were dismissed as the non-CAT limits had been exhausted.

In Paranawithana v. Certas Home and Auto Insurance Company, 2025 CarswellOnt 13367 (Ont. L.A.T.) (August 13, 2025, Prince and Morissette, Vice-Chair), a dispute arose regarding whether the applicant had suffered a catastrophic impairment and whether he was entitled to claims for attendant care, housekeeping and medical rehabilitation benefits.

The adjudicators found that the applicant had sustained a catastrophic impairment under Criterion 7 under 3. 1(1)7 of the SABS.

The applicant had struck a vehicle in front of him and sustained numerous soft tissue injuries. Police and paramedics came to the scene, but the applicant declined to be taken to the hospital.

The applicant relied on CAT reports prepared by Verity Medical Assessments and the insurer relied on reports prepared by AssessMed. Dr. Karabatsos prepared an executive summary for the insurer which rated the WPl under criterion 7 at 29%. Dr. Blitzer's report for the applicant gave a rating of 61%. The Tribunal found that a 55% WPI rating was appropriate, which met the threshold for a finding of catastrophic impairment.

Finally, in *Krupnikov v The Personal Insurance Company*, 2025 CarswellOnt 11162 (Ont. L.A.T.) (July 4, 2025, Evans), Adjudicator Evans held that the applicant had sustained a catastrophic impairment under criterion 8 due to a mental and behavioural disorder and s. 3.1 of the SABS.

The adjudicator concluded that the applicant had a "marked impairment in the activities of daily living domain of function" (para. 51). It was found that he neglected his personal care, was minimally involved in household tasks, rarely went out and was largely inactive. A family vacation, which his wife had organized, was not seen as indicating a higher level of function (para. 51).

Under the domain of social functioning, he was found to have a marked impairment (para. 58). His wife testified that he had become "irritable, short-tempered, and confrontational" (para. 53). Their relationship had unraveled and so had his relationship with his two daughters. His wife decided to divorce him in January 2025. The respondent relied on social media posts to argue that they showed the applicant engaging "with his family in what appear to be normal, caring, loving relationships" (para. 59). The adjudicator placed "no weight on the social media posts in that regard". On a balance of probabilities, the adjudicator found that the couple "were telling the truth rather than that they were sophisticated liars" (para. 61 (iii)).

The applicant was found to have a marked impairment in the "adaptation domain of function" (para. 67). In the situational assessment "he was observed to deteriorate, such that he withdrew from the task at hand and from the assessments themselves" (para. 65). As he had marked impairments in three domains, the adjudicator did not consider the concentration, persistence, and pace domain.