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ACCIDENT BENEFITS IN ONTARIO

Catherine H. Zingg

Originally co-authored by the late

James M. Flaherty

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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); 4 (Table of Special Awards); 5A (Former Licence Appeal Tribunal Rules); 8 (Practice Notes); Appendix A (Statutes), and Appendix B (Regulations).

## Highlights

In this release there are two Divisional Court decisions that should be reviewed: *Tracy Adams v. Aviva Insurance Company*, 2024 ONSC 715 (Ont. Div. Ct.) (February 7, 2024) and *Co-Operators Insurance Company v. Bennett*, 2024 ONSC 467 (Ont. Div. Ct.) (February 7, 2024).

In *Adams*, the court set aside the preliminary decision of January 27, 2023, and the reconsideration of May 31, 2023. The matter was remitted back to the Licence Appeal Tribunal for a new hearing at first instance, to be heard by a different adjudicator. Ms. Adams had “submitted her application after the period of time prescribed in s. 32(1)” (para. 20). The court noted that the finding “by the Tribunal that she did not have a reasonable excuse is a finding of fact from which there is no appeal” (para. 20). The Tribunal had found that Ms. Adams was “raising a new issue on appeal” (para. 22). The court rejected this finding. The submissions made by Ms. Adams at first instance regarding the interplay of ss. 32(1), (10) and 34 were submitted and the court was satisfied that “she did assert, at first instance, that s. 32(10) provides the only consequence to a late delivery of an application, when the late delivery is made without reasonable excuse” (para. 22).

In *Bennett*, the Co-operators appealed from a LAT decision which held that Ms. Bennett was eligible for an attendant care benefit assessment. Counsel for the Co-operators argued that “although she was removed from the MIG due to her pre-existing condition, she nevertheless only suffered minor injuries in her accident” (para. 16). It further submitted that Ms. Bennett was “excluded from any attendant care assessment on a plain reading of ss. 14.2 and 25(2) of the SABS, and the MIG is irrelevant to the determination of the question” (para. 16). This argument was rejected, and the appeal was dismissed.

Another important decision is *DC v. TD Insurance Meloche Monnex*, 2023 CarswellOnt 13093 (Ont. L.A.T.) (August 3, 2023), which found that an applicant who was a minor at the time of the accident and

suffered a catastrophic injury was entitled to non-earner benefits despite the provision in the SABS which states that NEBs are not payable to an applicant that is under 18 years old.

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