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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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Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 - s. 7 - Member Accountability Framework

Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009- s. 14(4) - Chair

Shuttleworth v. Ontario (Safety, Licensing Appeals and Standards Tribunals), — 2019 ONCA 518, 2019 CarswellOnt 9838, 52 Admin. L.R. (6th) 332, 90 C.C.L.I. (5th) 179 (Ont. C.A.) — Peel Mutual, SLASTO and the LAT appealed from the Order of the Divisional Court, dated June 20, 2018, in which Ms. Shuttleworth’s application for judicial review was granted and the LAT’s decision was set aside. The Divisional Court had “held that the LAT’s decision making process did not meet the minimum standards required to ensure both the existence and the appearance of adjudicative independence” (at para. 4). The appeal was dismissed.

Ultimately, the Court of Appeal was “not persuaded that the Divisional Court erred in its conclusion that there was a lack of independence on the facts of the case”. The Court of Appeal accepted that the Divisional Court had “correctly found that the Executive Chair’s imposition of the review on the Adjudicator breached the rules set out in the trilogy” (at para. 49). Secondly, the Divisional Court had found that the “breach was significant because of the power of the SLASTO Executive Chair” (at para. 51). The Divisional Court had “correctly concluded that the review process lacked the appropriate procedural safeguards” (at para. 53). The Court of Appeal found that there was no basis for appellant interference with the Divisional Court’s analysis of the issue of a reasonable apprehension of a lack of independence (at para. 56). The S.A.B.S. - 2010 was amended effective June 8, 2019 pursuant to O. Reg 123/19.

S.A.B.S. - 2010 - s. 3 - Accident

S.B. v. Liberty Insurance, 2019 CarswellOnt 12688 (Ont. L.A.T. - AABS) (June 28, 2019, Kershaw) (Reconsideration decision) — The Vice-Chair found that the applicant who was struck by a cyclist on the sidewalk while delivering mail had been injured in an “accident” within the meaning of the *Schedule*. The adjudicator found no error of fact in the tribunal’s finding and found that it was open to the tribunal to conclude that the appellant’s body struck the vehicle based on the evidence before it. The finding was found to be reasonable. The tribunal had considered the applicant’s evidence “with respect to the fact that when she gave her information for the Ambulance Call Report and WSIB, she was suffering from a head injury” (at para.16).

S.A.B.S. - 2010 - s. 19 - Attendant Care - Post-104 Weeks

S.A.B.S. - 2010 - s. 3(8) - Deemed Incurred Expenses

D.M. v. Aviva Insurance, 2019 CarswellOnt 8959 (Ont. L.A.T. - AABS) (May 24, 2019, Boyce) (Reconsideration decision) — Aviva applied for Reconsideration of a decision in which the tribunal found that the applicant was entitled “to post-104 week attendant care benefits despite not being designated catastrophically impaired” (at para. 1). Section 20(2)(a) of the S.A.B.S. - 2010 “indicates that no attendant care benefit is payable for expenses incurred more than 104-weeks after the accident unless the insured person sustains a catastrophic impairment” (at para. 8). The respondent’s request for Reconsideration was granted. The adjudicator found that the tribunal had committed an error of law in finding that the applicant was entitled to post-104 week attendant care benefits to date and ongoing despite D.M. not having been designated as having a catastrophic impairment.

