

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Sachs, O’Brien and Kaufman JJ.

BETWEEN:)	
)	
Flordeliza Marcelo)	<i>Yoni Silberman and Carlo Panaro</i> , for the
)	Appellant
Appellant)	
)	
– and –)	
)	
The Personal Insurance Company)	<i>Yalda Aziz, Arian Aria and Justin Beaulieu</i> ,
)	for the Respondent
Respondent)	
)	
)	
)	
)	HEARD in Toronto: January 26, 2026

Overview

[1] This appeal raises the issue of whether an intracranial brain contusion fits within the definition of a “minor injury” under s. 3(1) of the *Statutory Accident Benefits Schedule - Effective September 1, 2010*, O. Reg. 34/10 (the “SABS”).

[2] In a preliminary issue decision dated November 21, 2024, the Licence Appeal Tribunal (the “LAT” or the “Tribunal”) determined that it did (the “Decision”). Ms. Marcelo (the “Insured”) applied for a reconsideration of the Decision and on July 9, 2025, the LAT denied her request for reconsideration (the “Reconsideration Decision”).

[3] This is an appeal from the Decision and the Reconsideration Decision. For the reasons that follow, I find that the LAT erred in law in its interpretation of s. 3(1) of the *SABS*. Therefore, I would allow the appeal, set aside the LAT’s decisions, and make orders consistent with a finding that the Insured’s intracranial brain contusion is not a “minor injury”.

Factual Background

[4] The Insured was injured in a motor vehicle accident on August 29, 2019. A CT scan performed on the date of the accident confirmed that she had suffered from a brain injury arising from a left frontal intracranial cerebral brain contusion. She made an application for accident benefits to the Personal Insurance Company (the “Insurer”) who determined that her injury met

the criteria to be considered a “minor injury” under the *SABS* and therefore her benefits were to be assessed under the Minor Injury Guideline (the “MIG”) in the *SABS*, which limits her medical and rehabilitation benefits to \$3500.00.

[5] On August 19, 2022, the Insured made an application to the LAT to dispute, among other things, her placement in the MIG. The LAT directed that a written hearing be held to determine the issue.

[6] In the Decision, the LAT found that the definition of a “minor injury” in s. 3(1) of the *SABS* includes a “contusion”, which “includes all types of contusions, including a brain contusion”. The LAT also reviewed the evidence before it and found that it was not satisfied that the Insured had suffered a traumatic brain injury.

[7] The Insured sought reconsideration of the Decision, arguing that in the Decision, the LAT had erred in law in treating her intracranial contusion as a minor injury, and made a factual error in failing to treat her injury as a traumatic brain injury. In its Reconsideration Decision, the LAT reaffirmed that “contusion” in s. 3(1) of the *SABS* must be interpreted broadly to include all types of contusions, including brain contusions, unless the resulting impairment rises to a non-minor level.

Jurisdiction and Standard of Review

[8] Subsections 11(1) and (6) of the *Licence Appeal Tribunal Act*, 1999 S.O. 1999, c. 12, Sch. G provide for an appeal to this court from decisions of the LAT on questions of law. Questions of law are to be reviewed on a standard of correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 563, at para. 37.

Analysis

[9] The only question of law raised in this appeal is whether the LAT erred in its interpretation of s. 3(1) of the *SABS* when it classified the Insured’s brain injury as a “minor injury”. The assertion that the Tribunal erred in its finding that the Insured’s injury was not a “traumatic brain injury” does not raise a question of law, but a question of mixed fact and law, which is beyond the jurisdiction of this court on an appeal.

Section 3(1) of the SABS

[10] Section 3(1) of the *SABS* defines a “minor injury” as follows:

“minor injury” means one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury;

The “modern” rule of statutory interpretation

[11] Courts and administrative decision makers must interpret statutory provisions by applying the “modern” principles of statutory interpretation. They require that the words of a statute be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Vavilov*, at para. 117, citing *Rizzo v. Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21. In other words, questions about the meaning of the words in a statute must be “resolved by an analysis that has regard to the text, context and purpose of the legislation in question”: *Vavilov* at para. 118.

The purpose of the SABS

[12] Section 268(1) of the *Insurance Act*, R.S.O. 1990, c. I.8 provides that every automobile insurance policy in Ontario is deemed to include the no-fault benefits set out in the *SABS*. These benefits are meant to ensure that those who are injured in an accident can claim the necessary benefits from their insurer, regardless of fault.

[13] In *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882, 148 O.R. (3d) 438, at para. 42, the Ontario Court of Appeal approved the following description of the purpose of the *SABS*:

The *SABS* are remedial and constitute consumer protection legislation. As such, it is to be read in its entire context and in their ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature. The goal of the legislation is to reduce the economic dislocation and hardship of motor vehicle accident victims and as such, assumes an importance which is both pressing and substantial.

[14] Section 64(1) of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F requires that an Act and the regulations made under that Act “be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best insures the attainment of its objects.”

The Statutory Context

The Minor Injury Guideline

[15] The definition of “minor injury” operates within a statutory scheme that limits treatment and rehabilitation benefits and provides structured benefits for minor injuries. This statutory scheme is set out in ss. 18(1) and (2) of the *SABS* and that is further clarified in the MIG. Section 18(1) expressly limits the amount of the medical and rehabilitation benefits as a result of an accident to \$3500 for minor injuries in accordance with the MIG.

[16] In s. 3(1) of the *SABS* “Minor Injury Guideline” is defined as a “guideline, (a) that is issued by the Chief Executive Officer under subsection 268.3(1.1) of the Act and published in *The Ontario Gazette*, and (b) that establishes a treatment framework in respect of one or more injuries;”

[17] Superintendent's Guideline No. 01/14 is the MIG. It specifies that the objectives of the Guideline include to "[s]peed access to rehabilitation for persons who sustain minor injuries in auto accidents" and "[b]e more inclusive in providing immediate access to treatment without insurer approval for persons with minor injuries as defined in the SABS and set out in Part 2 of this Guideline."

[18] Section 3(1) of the *SABS* as well as s. 2 of the MIG explicitly identifies minor injuries as sprains, strains, whiplash-associated disorders, contusions [commonly known as bruises], abrasions, lacerations, and subluxations [which are partial dislocations of a joint], along with clinically associated sequelae. The MIG also includes a list of definitions that exclude certain injuries from the framework, as follows:

(b) sprain means an injury to one or more tendons or ligaments or to one or more of each, including a partial but not a complete tear.

(c) strain means an injury to one or more muscles, including a partial but not a complete tear.

(d) subluxation means a partial but not a complete dislocation of a joint.

...

(f) whiplash associated disorder means a whiplash injury that:

(i) does not exhibit objective, demonstrable, definable and clinically relevant neurological signs, and

(ii) does not exhibit a fracture in or dislocation of the spine.

[19] The MIG prescribes a "functional restoration model" consisting of a 12-week treatment program for minor injuries. Some of the recommended interventions include home exercise programs, activity prescriptions, and mobilization and manipulation techniques.

[20] The MIG contains limited provisions for diagnostic imaging. Radiographs (X-rays) may be undertaken without insurer approval only under limited conditions, such as suspected bony injuries or degenerative disease.

Catastrophic Impairment

[21] Part of the relevant statutory context is the definition of what constitutes a "catastrophic impairment" under the *SABS*. This is not because of an assertion that the Insured has suffered a catastrophic impairment, but because the language in this section provides some insight into how the definition of minor injury should be interpreted under s. 3(1).

[22] Section 3.1 of the *SABS* defines "catastrophic impairment". Pursuant to s. 3.1(1) an impairment is catastrophic "if an insured person sustains the impairment in an accident occurring on or after June 1, 2016, and the impairment results in any of the following":

“4. If the insured person was 18 years of age or older at the time of the accident, a traumatic brain injury that meets the following criteria:

- i. The injury shows positive findings on a computerized axial tomography scan [CT scan], a magnetic resonance imaging [MRI] or any other medically recognized brain diagnostic technology indicating intracranial pathology that is a result of the accident, including, but not limited to, **intracranial contusions** or haemorrhages, diffuse axonal injury, cerebral edema, midline shift or pneumocephaly.
- ii. [The provision goes on to require that the injury be rated on its severity to qualify as a catastrophic impairment]

5. If the insured person was under 18 years of age at the time of the accident, a traumatic brain injury that meets one of the following criteria:

- i. The insured person is accepted for admission, on an in-patient basis, to a public hospital named in a Guideline with positive findings on a computerized axial tomography scan, a magnetic resonance imaging or any other medically recognized brain diagnostic technology indicating intracranial pathology that is a result of the accident, including, but not limited to, **intracranial contusions** or haemorrhages, diffuse axonal injury, cerebral edema, midline shift or pneumocephaly. (emphasis added).

[23] Thus, under s. 3.1 of the *SABS*, an injury involving bleeding in the brain (intracranial contusions) is recognized as catastrophic if it occurs in an insured who is under 18 and is potentially catastrophic if it occurs in an insured who is over 18.

The Tribunal’s Reasoning

[24] In the Decision, the LAT, as previously noted, found that s. 3(1) expressly includes a “contusion” in the definition of a “minor injury”. Further, the word “contusion” is not limited. Therefore, “a ‘contusion’ includes all types of contusions, including a brain contusion.”

[25] In the Reconsideration Decision, the Tribunal dealt with the Insured’s arguments that it had made an error of law in interpreting the word “contusion” as including a brain contusion. Those arguments included a submission that the interpretation of the *SABS* had to be guided by the “modern” principle of statutory interpretation and that the legislature does not intend to produce absurd consequences.

[26] The Tribunal accepted that it was bound by the modern principle of interpretation and that it was to avoid an interpretation that produced an absurd result. However, it rejected the suggestion that it made an error of law by finding that a brain contusion could be classified as a minor injury. As put by the Tribunal:

[23] In essence, the applicant submits that a brain contusion, in and of itself, is an exclusion from the definition of minor injury. Despite my acceptance of the modern principle of interpretation, I do not find that I made an error in law by finding that a brain contusion is a minor injury, absent evidence of it resulting in an impairment that takes it out of the minor injury definition [.]

[27] The Tribunal went on to reiterate that “if the legislature had wanted to preclude all intracranial contusions from minor injuries, it could have done so by defining ‘contusion’ such that it excluded ‘intracranial contusions’ from being a minor injury.” It noted at para. 27 of the Reconsideration Decision:

[T]he legislature defined certain terms (i.e. sprain, strain, subluxation [*sic*], whiplash associated disorder) in the minor injury definition and set a threshold at which they became non-minor injuries, but it did not do that with respect to “contusion”, “abrasion” and “laceration” indicating that it did not want to set a threshold as to when they ceased to be minor injuries. The reason being is that the legislature recognized that a contusion, abrasion, and laceration, in and of themselves, are the injury mechanism that results in the impairment, and it is the severity of the impairment that determines whether it is a minor injury or not. Therefore, a contusion, abrasion and laceration are minor injuries if they do not result in a non-minor impairment. (emphasis added)

[28] The Tribunal then went on to examine the evidence concerning the level of impairment suffered by the Insured and concluded that the Insured had not proved that her intracranial contusion had “resulted in a non-minor impairment.”

The Tribunal’s reasoning discloses an error of law

[29] The Insured challenged the Tribunal’s conclusion that she had not proved that her intracranial contusion had resulted in a non-minor impairment. These reasons will not be addressing that aspect of her argument, as it involves a question of mixed fact and law, not a question that raises an extricable error of law.

[30] The Tribunal’s error is in failing to recognize that s. 3(1) of the *SABS* focuses on the nature of the injury, not on the degree of impairment that flowed from that injury. This is apparent from the wording used, which is “minor **injury**” not “minor **impairment**”. This is to be contrasted with the wording used in the section of the *SABS* dealing with catastrophic **impairment**. In that section, the focus is on the severity of the impairment that results from an injury. This is unlike s. 3(1) of the *SABS*, which is an injury-based definition.

[31] Thus, the question the Tribunal should have asked itself in interpreting s. 3(1) is whether an intracranial contusion is the type of **injury** that was encompassed by the minor injury guidelines, not whether the Insured's impairment was minor.

[32] Having an injury-based definition is consistent with a policy choice to categorize certain injuries as being subject to a compensation regime that is to be administered in an efficient and low-cost way. To classify potentially serious injuries as minor based on the level of impairment suffered would be to undermine the choice that the legislature made to have a clear set of injuries that were to be dealt with pursuant to a separate regime. This in turn could lead to uncertainty and inconsistency.

[33] If the Tribunal had asked itself the right question – namely whether an intracranial contusion was the type of injury that was encompassed by the “minor injury” guidelines, the answer would have been “no”.

[34] First, including a brain contusion in the definition of “minor injury” does not promote the consumer protection purpose of the *SABS*, which is to reduce the economic dislocation and hardship suffered by people who have been injured in an automobile accident.

[35] The only diagnostic tool available under the MIG without insurer approval is an X-ray. The criteria for an insured person to undergo diagnostic imaging without prior insurer approval does not include brain contusions or the suspicion of a brain trauma. Further, it was not disputed that brain contusions cannot be diagnosed through an x-ray. Under the MIG, an insured who suffers from a brain injury does not have immediate access to the diagnostic tool that they need to diagnose their injury.

[36] The timeline set out in the functional restoration model embraced in the MIG (12 weeks), is a timeline that is also incompatible with a brain injury. It was not disputed that the degree of impairment from a brain injury may take some time to manifest itself.

[37] The recommended interventions that are part of the MIG restoration model - home exercise programs, activity prescriptions, and mobilization and manipulation techniques – may be wholly appropriate for musculoskeletal injuries but are wholly inappropriate for brain contusions. It was not disputed that a brain contusion is a brain injury that may cause loss of consciousness, cognitive defects, or long-term neurological complications – none of which can be addressed by stretching, exercise, or manual therapy.

[38] The \$3500 limit prescribed by the MIG makes no sense for a person who has suffered a brain contusion. The accepted form of assessing what treatment is required for such an injury is a neuropsychological assessment. The cost of such assessments is considerably more than \$3500. In this case, one of the benefits the Insured was seeking (which the LAT denied) was a neuropsychological assessment for \$6,723.50.

[39] Second, the context of the word “contusion” in s. 3(1) in the statute makes it clear that the word is not to include a brain contusion.

[40] The word “contusion” appears in a list of injuries that are musculoskeletal in nature, injuries that are very different from a brain injury. A bruise to the thigh or elbow is very different than a bruise to the brain. The exclusions in the MIG definition are consistent with a legislative intent to capture injuries that are “minor” within the MIG. One of those exclusions specifically references brain injuries.

[41] Everything in the MIG model makes sense for musculoskeletal injuries in the way that it does not for brain injuries – the diagnostic tool, the monetary cap, the timeline for treatment and the recommended therapies.

[42] Finally, and very significantly, a brain contusion is an injury that on its own can satisfy the criterion for a catastrophic impairment in a person who is under 18 and is an injury that can form the basis for a catastrophic impairment designation in a person who is over 18. It is illogical that an injury that has the potential to be “catastrophic” can also be considered “minor”.

Remedy

[43] This is a case where the outcome is inevitable and remitting the matter back to the Tribunal would serve no useful purpose. Therefore, in addition to setting aside the decisions under review, I would make an order that the Insured be removed from the MIG and that she is entitled to the benefits that would have been available to her as at the time she was placed within the MIG, such that the 5-year statutory limitation on coverage is not expired.

Conclusion

[44] For these reasons, the appeal is allowed. The Decision and the Reconsideration are set aside, and an order is to issue that the Insured be removed from the MIG and that she is entitled to the benefits that would have been available to her as at the time she was placed within the MIG, such that the 5-year statutory limitation on coverage has not expired. In accordance with the agreement of the parties, the Insurer is to pay the Insured her costs, fixed in the amount of \$8000, all inclusive.

I agree  _____
Sachs J.

I agree  _____
O'Brien J.

I agree  _____
Kaufman J.

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DIVISIONAL COURT FILE NO.: 628/25
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ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Sachs, O'Brien and Kaufman JJ.

BETWEEN:

Flordeliza Marcelo

Appellant

– and –

The Personal Insurance Company

Respondent

REASONS FOR JUDGMENT

Released: February 25, 2026