

**CITATION:** Hamad v. Cooperators General Insurance Company, 2025 ONSC 3318  
**DIVISIONAL COURT FILE NO.:** 267/24  
**DATE:** 20250609

**SUPERIOR COURT OF JUSTICE – ONTARIO  
DIVISIONAL COURT**

**RE:** KHALAF HAMAD, Applicant

**AND:**

COOPERATORS GENERAL INSURANCE COMPANY AND LICENCE  
APPEAL TRIBUNAL, Respondents

**BEFORE:** Heeney, Backhouse and Nakatsuru JJ.

**COUNSEL:** *Mark Stoiko*, for the Applicant

*Kathleen O’Hara*, for Cooperators General Insurance Company

*Jesse Boyce*, for Licence Appeal Tribunal

**HEARD:** June 3, 2025 at Hamilton

**ENDORSEMENT**

[1] The applicant, Khalaf Hamad, seeks to quash the decision of the Licence Appeal Tribunal (“LAT”), dated October 31, 2023 for dismissing his application for attendant care benefits on the basis that he had failed to prove economic loss sustained by his family members who provided attendant care to him.

[2] The claim was under the *Statutory Accident Benefits Schedule*, [O. Reg. 34/10](#) (the “*Schedule*” or “SABS”) in relation to injuries sustained in a motor vehicle accident that took place on April 27, 2021.

[3] Both parties’ factums frame the proceeding as an appeal as well as a judicial review. No notice of appeal was filed. Cooperators is content for this to be considered an application for both judicial review and an appeal.

[4] The applicant acknowledges that the LAT did not misinterpret the SABS. Rather, he takes issue with the applicable framework for attendant care benefits that requires that attendant care benefits be ‘incurred.’ He submits this results in an absurd outcome because the calculation has no bearing on what the applicant needs and because the applicant lacked resources to obtain professional care. He submits that this framework is inconsistent with the “consumer protection mandate of the SABS” and its application resulted in an error in law, is inequitable and unreasonable.

[5] The applicant seeks an order quashing the LAT’s decision and confirming his entitlement to attendant care benefits. In the alternative, he seeks an order that the matter be remitted to the LAT to be decided by a different adjudicator along with a declaration that the requirement that attendant care benefits be “incurred”, in accordance with s. 3(7)(e)(iii) of the SABS, is not applicable to the determination of entitlement to such benefits and an order prohibiting the insurer from denying a claim for attendant care benefits on the basis of the *Schedule* regime that currently applies.

[6] Whether as a judicial review or an appeal, we do not find any basis to interfere in LAT’s decision. LAT reasonably rejected the submission that it should ignore the requirements set out in the *Schedule*. Our reasons are as follows.

### **The Claim for Attendant Care Benefits**

[7] On April 27, 2021, the applicant was involved in a motor vehicle accident. He was 67 years old at the time. The applicant reported physical injuries (fractured jaw, lost teeth, injury to his back), social, and psychological injuries, and limitations with respect to activities of daily living as a result of the accident. The applicant sought attendant care benefits in the amount of \$2,992.55 per month.

### **Legislative Framework**

[8] Section 3(7)(e) of the SABS provides:

(7) For the purposes of this Regulation,

(e) subject to subsection (8), an expense in respect of goods or services referred to in this Regulation is not incurred by an insured person unless, (i) the insured person has received the goods or services to which the expense relates, (ii) the insured person has paid the expense, has promised to pay the expense or is otherwise legally obligated to pay the expense, and (iii) the person who provided the goods or services, (A) did so in the course of the employment, occupation or profession in which he or she would ordinarily have been engaged, but for the accident, or (B) sustained an economic loss as a result of providing the goods or services to the insured person;

### **The Decision October 31, 2023**

[9] The LAT held it would be an error in law for the LAT to ignore the requirements set out in the *Schedule*. The LAT was aware of no exceptions to s. 3(7)(e) granting the LAT jurisdiction to ignore the economic loss requirement. The LAT found that the *Schedule* reflects a clear intention on the part of the legislature to compensate non-professional attendant care providers only for their economic loss.

[10] The LAT acknowledged that the applicant’s family members likely spent many hours providing attendant care to the applicant since his 2021 accident. However, the applicant had not met his onus to establish economic loss on a balance of probabilities.

[11] The applicant's request for reconsideration was dismissed for being late. His request to review the reconsideration was denied.

### **Analysis**

[12] The applicant accepts that the LAT did not misinterpret s. 3(7)(e). The applicant concedes that for a non-professional attendant care provider, the section is clear that attendant care costs cannot exceed the person's economic loss. Rather, he takes issue with the law itself regarding attendant care benefits. He argues that there is a conflict of laws between the purpose of the SABS as consumer protection legislation and s. 3(7)(e) that must be resolved in favour of the consumer.

[13] Generally a conflict of laws analysis is engaged in multi-jurisdictional private law disputes and falls outside a statutory interpretation exercise. The applicant was not able to find any caselaw in support of his argument that conflict of laws applies in this situation. We find no merit to this argument.

[14] The applicant agreed that what he was asking us to do was to re-write the legislation to create a fair, reasonable and equitable result. He relies on *Tomec v Economical Mutual Insurance Company*, 2019 ONCA 882 at para. 45: "Given the choice of a statutory interpretation that furthers the public policy objectives underlying the SABS and one that undermines it, the only reasonable decision is to side with the former." The problem with the applicant's reliance on para. 45 of *Tomec* is that he is not making a statutory interpretation argument. There is no ambiguity in the legislation. Rewriting the legislation to create what the applicant submits is a more reasonable or non-absurd result is not a justiciable issue. An application for judicial review or appeal is not the appropriate forum or procedure for seeking such relief. The applicant has not raised a constitutional issue. Where it is conceded that there is no ambiguity in the words of s. 3(7)(e), the applicant's disagreement with legislation that the LAT has reasonably interpreted and applied is not a basis for quashing the Decision.

[15] The application is dismissed.

### **Costs**

[16] Having found no merit to this application, we do not accept the applicant's submission that no costs should be awarded because of the public policy implications of the matter. In accordance with the parties' agreement on quantum of costs, the applicant shall pay costs in the amount of \$6000 to Cooperators as the successful party.

[17] The LAT does not seek its costs and none are awarded.

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Heeney J.

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Backhouse J.

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Nakatsuru J.

**Date:** June 9, 2025