Court of Appeal for Saskatchewan
Docket: CACV4464

Citation: *Umpherville v Saskatchewan Government Insurance*, 2025 SKCA 69
Date: 2025-06-27

Between:

Verna Umpherville

Appellant
(Appellant)

And

Saskatchewan Government Insurance

Respondent
(Respondent)

Before:	Tholl, Kalmakoff and McCreary JJ.A.
Disposition:	Appeal dismissed
Written reasons by:	The Honourable Justice Jerome A. Tholl
In concurrence:	The Honourable Justice Jeffery D. Kalmakoff The Honourable Justice Meghan R. McCreary
On appeal from:	2024 SKAIA 27, Regina
Appeal heard:	June 4, 2025
Counsel:	Peter Abrametz for the Appellant Dale Brown for the Respondent

Tholl J.A.

I. INTRODUCTION

[1] Boden Sasakamoose died after being involved in a confrontation with the police, much of which occurred while he was inside a stationary vehicle. His mother, Verna Umpherville, as administrator of his estate, applied to Saskatchewan Government Insurance [SGI] for death benefits under the no fault provisions of *The Automobile Accident Insurance Act*, RSS 1978, c A-35 [*AAIA*]. Those benefits were denied and that decision was upheld by the Automobile Insurance Appeal Commission [*Commission*]: *Umpherville v Saskatchewan Government Insurance*, 2024 SKAIA 27 [*Commission Decision*]. Ms. Umpherville appeals the *Commission Decision* and asserts that the Commission erred in its interpretation of the relevant provisions of the *AAIA* and in its analysis of the causal relationship requirement.

[2] For the reasons given below, the appeal should be dismissed.

II. BACKGROUND

[3] At the hearing before the Commission, the parties filed documentary evidence and an agreed statement of facts, which was not supplemented by viva voce or affidavit evidence. The agreed statement of facts is brief, so I will reproduce it rather than summarizing it:

> 1. Boden Sasakamoose was a passenger in a motor vehicle, operated by Adriea Thomas, when it was stopped by the Prince Albert Police Services at approximately 2:30 a.m. on April l, 2023.
>
> 2. The Prince Albert Police Service pulled over a 2010 Avenger to conduct an investigation.
>
> 3. The deceased, Mr. Sasakamoose was seated in the front passenger seat of the motor vehicle.
>
> 4. The Police Services sought to arrest Mr. Sasakamoose and remove him from the 2010 Avenger and caused damage to the motor vehicle in doing so.
>
> 5. The deceased was repeatedly struck by batons and tasered by police officers. At some point in the altercation, Mr. Sasakamoose was in the driver seat and the 2010 Avenger lurched forward and struck a City of Prince Albert Police vehicle which was stopped in front of the 2010 Avenger with its emergency lights activated.
>
> 6. Mr. Sasakamoose while in the driver's seat, suffered blunt force trauma from batons as well as being electrocuted by tasers. While the vehicle did lurch forward, the low speed

> collision was not the cause of the injuries which resulted in the death of the Mr. Sasakamoose.
>
> 7. Mr. Sasakamoose was pulled from the vehicle in an unconscious state. And never regained consciousness. Mr. Sasakamoose was in hospital when he passed away on April 26, 2023.
>
> 8. The Discharge Summary from Royal University Hospital noted that Mr. Sasakamoose was tasered by police while being apprehended, he suffered cardiac arrest and thereafter remained comatose. The ongoing coma was felt to be due to an anoxic injury and global cerebral ischemia due to cardiac arrest.
>
> 9. The collision between the 2010 Avenger and the police vehicle was not the cause of the cardiac arrest, but the tasing and striking with batons did cause injuries which resulted in death.
>
> 10. The collision did not cause the injuries such as the cardiac arrest that led to the coma that eventually resulted in death.

[4] As the administrator of Mr. Sasakamoose's estate, Ms. Umpherville applied to SGI for no fault benefits under Part VIII of the *AAIA*. The relevant portions of that statute are as follows:

> **Interpretation of Act**
> **2**(1) In this Act:
>
> > (a) **"accident"** means any event in which property damage or bodily injury is caused by a motor vehicle;
> >
> > …
> >
> > (g) **"bodily injury"** means any physical or mental injury, including any acquired brain injury, permanent physical or mental impairment or death;
> >
> > (h) **"bodily injury caused by a motor vehicle"** means bodily injury caused by a motor vehicle, by the use of a motor vehicle or by a load, including bodily injury caused by a trailer used with a motor vehicle, but does not include bodily injury mentioned in subsections 20(3), 35.11(2) and 101(2) … .
>
> …
>
> **Application of Part**
> **101**(1.1) This Part applies to any person who sustained bodily injury caused by a motor vehicle arising out of an accident on or after the date that this Part comes into force and who has not provided the insurer with a tort election in the manner prescribed by Part IV.
>
> …
>
> **101**(2) Notwithstanding subsection (1), this Part does not apply to a bodily injury caused by a motor vehicle arising out of an accident if the bodily injury:
>
> > (a) is caused while the motor vehicle is not in motion … .

[5] In a decision letter dated December 14, 2023, SGI denied benefits on the following basis:

> Our review of the information on file concluded that Boden died of his ongoing coma due to an anoxic injury and global cerebral ischemia due to his cardiac arrest and not the motor vehicle accident. After medical review, it was determined that it is more likely than not that Boden's cardiac arrest and subsequent coma is unrelated to the motor vehicle accident.

> In light of this, you are not entitled to No Fault benefits as per section 101(1.1) of *The Automobile Accident Insurance Act* which *provides coverage for bodily injury caused by a motor vehicle arising out of an accident. Therefore, we are unable to provide any no fault accident benefits to you or the Estate of Boden Umpherville-Sasakamoose*.
>
> (Emphasis in original)

[6] Ms. Umpherville appealed SGI's decision to the Commission.

III. *COMMISSION DECISION*

[7] After introductory comments, the Commission set out the agreed statement of facts and the portions of the *AIAA* it found relevant. It defined the issue before it as being, "Was the deceased's death caused by the motor vehicle accident thereby entitling the Appellant to benefits pursuant to Part VIII of the [*AAIA*]?" and noted that the onus rested with Ms. Umpherville (*Commission Decision* at para 4). The Commission stated that the parties agreed that the two-part test from *Amos v Insurance Corporation of British Columbia*, [1995] 3 SCR 405 [*Amos*] applied. The Commission described the *Amos* test in the following terms (*Commission Decision* at para 8):

> a. Did the accident result from the ordinary and well-known activities to which automobiles are put?
>
> b. Is there some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the Appellant's injuries and the ownership, use or operation of that vehicle or is the connection between the injuries and the ownership, use or operation of the vehicle merely incidental or fortuitous?

[8] SGI conceded that the first part of the *Amos* test was met, which the Commission agreed with, stating as follows: "The Deceased was riding as a passenger in a motor vehicle at the time of the police stop. Riding as a passenger is an ordinary and well-known use of a motor vehicle" (at para 9). The first part of the *Amos* test was not put into issue in this appeal, although it will be addressed tangentially. As they did at the hearing before the Commission, the parties diverge in this Court on whether the second part has been satisfied.

[9] In its examination of the second part of the *Amos* test, the Commission summarized, quoted from, and commented on *Amos*, *Meyer v Saskatchewan*, 1999 SKQB 5, [1999] 11 WWR 641 [*Meyer*], *K.C. v Saskatchewan Government Insurance*, 2008 SKAIA 44 [*K.C.*], aff'd *Buckton v Saskatchewan Government Insurance*, 2011 SKCA 23 [*Buckton*], *Citadel General Insurance v Vytlingam*, 2007 SCC 46, [2007] 3 SCR 373 [*Vytlingam*], *Lumbermens Mutual Casualty Co. v*

Herbison, 2007 SCC 47, [2007] 3 SCR 393 [*Herbison*], and *Smith v Zrobek*, 2018 MBQB 22, [2018] 4 WWR 619 [*Smith*]. After doing so, it concluded as follows:

> [20] The purpose of the *Act* in Saskatchewan is the same as stated in *Smith* which is to reduce the volume and costs of litigation arising from accidents involving automobiles. Injuries sustained by people while being arrested by the police is not the mischief which the legislature was concerned about when the no fault scheme was introduced. The legislature was concerned about people being injured in what are commonly called "automobile accidents", not injuries sustained while being arrested by the police. To extend coverage for these injuries goes further than necessary, even if a broad and liberal interpretation were to be given to the provisions.
>
> [21] After reviewing all of the evidence and the cases cited by both parties, it is our view that the circumstances of this case do not meet the second element of the *Amos* test. The vehicle was only the situs of the Deceased suffering a cardiac arrest. There is no nexus or causal relationship between the Deceased's injuries and the use or operation of the motor vehicle. The conduct of the police in using batons and tasers on the Deceased, at the time of his arrest, caused the Deceased's injuries. The use or operation of the motor vehicle was merely incidental or fortuitous to the injuries sustained by the Deceased.
>
> **CONCLUSION**
>
> [21] SGI's decision letter dated December 14, 2023 is upheld.

[10] Despite being set out in the *Commission Decision*, s. 101(2)(a) of the *AAIA* does not appear to have played any part in the Commission's analysis of the matter, and neither party argued that it should play a role in resolving the issues raised in this appeal. As such, the effect of this provision will not be analyzed in this judgment.

IV. ISSUES AND STANDARD OF REVIEW

[11] Leave to appeal was granted to Ms. Umpherville, pursuant to s. 194 of the *AAIA*, on the following questions of law:

(a) Did the Commission err in law by expressly concluding that coverage cannot be provided under the *AAIA* for injuries sustained while being arrested?

(b) Did the Commission err in law when it concluded that the death of Mr. Sasakamoose arising out of his arrest, and arising out of the use of a motor vehicle, which death was caused by the use of electronic tasers and blunt force trauma caused by batons, had no proximate causal relationship to the operation of the motor vehicle but was merely incidental or fortuitous?

[12] The standard of review for these questions of law is correctness: *Charles v Saskatchewan Government Insurance*, 2021 SKCA 11 at para 14, 456 DLR (4th) 132, and *Silzer v Saskatchewan Government Insurance*, 2021 SKCA 59 at para 25.

V. ANALYSIS

A. Approach to statutory interpretation

[13] This Court has written frequently regarding the approach to be taken to issues of statutory interpretation. Paragraphs 23 to 28 of *Regina Bypass Design Builders v Supreme Steel LP*, 2021 SKCA 82, comprehensively set out the nature of the exercise, which I will not summarize, nor repeat, but will rely upon.

B. Coverage for arrestees

[14] As quoted above, in discussing the purposes of the *AAIA*, the Commission stated as follows: "The legislature was concerned about people being injured in what are commonly called 'automobile accidents', not injuries sustained while being arrested by the police. To extend coverage for these injuries goes further than necessary, even if a broad and liberal interpretation were to be given to the provisions" (*Commission Decision* at para 20). Ms. Umpherville asserts that the Commission erred by creating a concrete exception to the no fault scheme by attributing fault to persons being arrested and by categorically determining that persons who suffer injuries while being arrested can never qualify for benefits under Part VIII of the *AAIA*. She asserts that, by creating such an exception, the Commission did something that only the Legislature is permitted to do. If that is how the impugned portion of paragraph 20 of the *Commission Decision* were to be interpreted, I would agree that it would be an error. However, I do not take the Commission as having laid down such an exception.

[15] In my view, the Commission was referring to the circumstances of the matter at hand when it made its comments. On a reading of the reasons as a whole, there is no indication that the Commission was attempting to create a broad-reaching exception that covered every situation involving an arrest or speaking to anything other than the situation it was analyzing. The statement was used to highlight the stated purpose of the *AAIA* – to aid in interpreting the legislation and to

demonstrate how the circumstances in which Mr. Sasakamoose was injured did not fit within that purpose. I do not see this as an error.

C. Causal relationship to the use of a motor vehicle

1. Position of the parties

[16] Ms. Umpherville asserts that the death resulted from Mr. Sasakamoose's arrest, which arose from his use of a motor vehicle. She points to the agreed statement of facts, which states that "[t]he Prince Albert Police Service pulled over a 2010 Avenger to conduct an investigation" (at item 2). Ms. Umpherville argues that the matter is analogous to *Amos*, where the relevant injuries had been inflicted by a gunshot, but the Court still found that the injuries arose from the use of the vehicles, such that there was coverage. She contends that the only logical conclusion is that the injuries here also originated from, flowed from, and were causally connected to the use of the vehicle. While recognizing that there is no coverage for truly random events that are not related to the use of a vehicle, or where a vehicle is merely the situs of the events, Ms. Umpherville submits that such is not the case here. She notes that there were no intervening events that broke the chain of causation from the point where the vehicle was pulled over for investigation to the point where Mr. Sasakamoose died.

[17] SGI responds by referring to the definitions of the terms *accident* and *bodily injury caused by a motor vehicle* in s. 2(1) of the *AAIA*, along with s. 101(1.1), and noting that the enactments are not identical to those in the legislation interpreted in *Amos*. While it does not suggest that the *Amos* test is inapplicable, SGI submits that the *AAIA* must be interpreted based on its own wording. A correct interpretation, it contends, excludes no fault benefits because the circumstances here do not satisfy the causation portion of the *Amos* test.

[18] In order to assess the parties' positions, I must first examine whether the *Amos* test applies in an unvarnished form in Saskatchewan or whether it must be modified to account for the specific provisions of the *AAIA*. The starting point for this analysis is an examination of *Amos* itself, followed by a canvas of the relevant case law that has considered it.

2. Selected jurisprudence

a. *Amos* as baseline (British Columbia)

[19] In *Amos*, a resident of British Columbia was attacked by carjackers while driving his van. Mr. Amos locked his doors and kept moving slowly as the assailants surrounded him and broke one of his windows. One of the perpetrators produced a gun and shot him. Mr. Amos managed to drive a few blocks away and obtain assistance, but he had sustained serious, disabling, permanent injuries as a result of a bullet striking his spinal cord. Mr. Amos applied for benefits under Part VII of the Revised Regulation (1984) under the *Insurance (Motor Vehicle) Act*, BC Reg 447/83 [*BC Legislation*]. The relevant portion of the *BC Legislation*, at the time, read as follows:

> **Coverage and benefits**
>
> 79(1) Subject to subsection (2) and sections 80 to 88, 90, 92, 100, 101 and 104, the corporation shall pay benefits to an insured in respect of death or injury *caused by an accident that arises out of* the ownership, use or operation of a vehicle and that occurs in Canada or the United States of America or on a vessel travelling between Canada and the United States of America.
>
> (Emphasis added)

[20] Coverage for Mr. Amos's injuries was refused by the insurer, and the matter ultimately arrived at the Supreme Court, which found that benefits were payable. In addition to setting out the test noted above, Major J. stated the following:

> [24] This appeal does not present the typical motor vehicle accident. A bullet, rather than a motor vehicle, was the cause of the injury. However, a motor vehicle need not be the instrument of the injury to satisfy the causal connection requirement. Injuries which do not arise from the negligent use of a motor vehicle may be covered by s. 79(1).
>
> [25] Was the attack in this case merely a random shooting, or did it arise out of the ownership, use or operation of the appellant's vehicle? While the appellant's van may have been singled out by his assailants on a random basis, the shooting which caused the appellant's injuries was not random. The appellant's vehicle was not merely the situs of the shooting. The shooting appears to have been the direct result of the assailants' failed attempt to gain entry to the appellant's van. It is not important whether the shooting was accidental or deliberate while entry to the vehicle was being attempted. It is important that the shooting was not random but a shooting that arose out of the appellant's ownership, use and operation of his vehicle. …
>
> [26] If the appellant had not been shot, but had lost control of his car while trying to get away from his assailants, the injuries suffered as a result of a subsequent car crash would surely be covered by the respondent. Similarly, if the appellant had suffered injuries as a result of being intentionally hit by those same assailants using a car instead of a gun, the respondent would not deny coverage. I do not think the instant case can be distinguished from the foregoing hypothetical examples. Generally speaking, where the use or operation of a motor vehicle in some manner contributes to or adds to the injury, the plaintiff is entitled to coverage.

> [27] The appellant's injuries arose out of the ownership, use and operation of his van. They originated from, flowed from, or were causally connected with its ownership, use and operation. Neither can it be said that there was an intervening act, independent of the ownership, use or operation of the vehicle, which broke the chain of causation. The appellant is therefore entitled to Part VII no fault benefits to compensate him for the injuries suffered as a result of the accident.
>
> [28] Invariably, each case must be decided on its own facts, applying the two-part test outlined above. It is not possible to predict every circumstance where an injury can be said to arise out of the ownership, use or operation of a vehicle. A true random shooting not related to the use or operation of a vehicle under the present wording of s. 79(1) is not covered but where a nexus or connection between the injuries and the vehicle exists, the injured plaintiff is entitled to coverage. The words in s. 79(1) chosen by the legislature are broad and should be interpreted to give meaning to the legislative intention that extends coverage where some connection is found between ownership, use or operation of a vehicle and the injuries sustained as a result of an accident.

[21] In *Amos*, the Supreme Court held that causation was not restricted to situations involving traditional motor vehicle accidents. Based on the *BC Legislation*, it found that causation was tied to events arising out of the ownership, use, or operation of the vehicle. However, there still had to be a connection: cases where the vehicle was simply the situs of the injuries, or the events were randomly associated with the vehicle, would not satisfy the test.

b. Supreme Court

[22] Twelve years later, the Supreme Court examined the *Amos* test in the companion cases of *Vytlingam* and *Herbison*. In both cases, the application of the test was modified, given that they were dealing with issues not directly related to no fault insurance.

[23] In *Vytlingam*, two men transported large rocks in a car to a highway overpass where they dropped them and randomly hit the Vytlingams' moving vehicle, causing severe injuries to the occupants. Although no fault benefits existed, the issue in that case revolved around coverage for an inadequately insured motorist in reference to the vehicle used to transport the rocks. The question before the Supreme Court was "whether the tort that caused the Vytlingams' injuries was sufficiently connected to the use and operation of [the assailant's] car for it to be concluded that the claim is based on a tort committed by a 'motorist'" (at para 4). Justice Binnie, writing for the Court, made some modifications to the *Amos* analysis to fit the circumstances he was examining. He reasoned that the actual actions of the tortfeasor were relevant to interpreting a liability policy, which is not so in a no fault regime: see paras 4 and 24–26. He drew a clear line based on no fault and liability policies (or statutory regimes). In doing so, Binnie J. stated that "nothing said here

should be construed to limit [*Amos*'s] application in a case of no fault benefits or in similar contexts where similar language is in issue" (at para 15).

[24] The error identified by the Supreme Court in *Vytlingam* was "transferring without modification the discussion of causation in *Amos* into the different context" of liability coverage (at para 24). For coverage to exist in this different context, there must be an "unbroken chain of causation" (*Vytlingam* at para 25). Justice Binnie concluded that the "rock throwing was an activity entirely severable from the use or operation of the [assailant's] vehicle" (at para 30). The case depended on "the Vytlingams being able to demonstrate that their claim arose from the ownership of, or directly or indirectly from the use or operation of the [assailant's] vehicle" (at para 35). Since the connection was tenuous (i.e., a broken chain of causation), the Vytlingams were ultimately unsuccessful.

[25] In *Herbison*, a hunter had exited his vehicle, left the engine running, stepped away from it, and shot into the semi-darkness, accidentally shooting his unseen companion. The shooter carried insurance through a standard motor vehicle liability policy. Under Ontario's statute, in order to trigger benefits, the loss needed to arise "directly or indirectly from the use or operation of [the insured shooter's] automobile" (at para 10). Justice Binnie determined that the fact pattern in *Herbison* stretched the applicability of automobile insurance too far. The use of the shooter's vehicle was found to be entirely incidental to his tortious negligent conduct. This was not a case of no fault insurance, so a stricter causation analysis applied; there must be "an unbroken chain of causation" (at para 12). On that analysis, there was no connection. This was highlighted by Binnie J.'s observation that Mr. Herbison did "not complain about [the shooter's] use and operation of the insured truck. He complain[ed] about the gunshot that put the bullet in his knee" (at para 12).

[26] A further relevant case from the Supreme Court is *Westmount (City) v Rossy*, 2012 SCC 30, [2012] 2 SCR 136 [*Rossy*]. There, Mr. Rossy had stopped his car at a stop sign where a tree fell on it and killed him. The controversy was whether the City of Westmount could be sued in negligence or whether the damages had to be paid out of the no fault automobile insurance benefits. The Supreme Court concluded the loss was an accident within the meaning of the Québec legislation and covered under the no fault scheme. Several pertinent points emerge from *Rossy*. First, the Supreme Court reaffirmed the difference between "arises from" (*BC Legislation*) and

"caused by" (Québec wording and the language used in the *AAIA*). Writing for the Supreme Court, LeBel J. rejected the argument that the language in *Amos* was sufficiently similar, saying that if "the legislature intended to create a sweeping provision, it could have used the words 'arising out of' instead of 'caused by'" (at para 50). Second, and relatedly, the Supreme Court distinguished *Amos* and *Vytlingam* based on the specific language of the legislation under examination. Justice LeBel did not find either case particularly helpful because the language and "provisions at issue … were worded differently" from the Québec statute (at para 49). Mechanically applying *Amos* – as was done in the lower courts in both *Vytlingam* and *Herbison* – was not the correct approach. Instead, the Court's task was to interpret the language before it.

[27] Third, LeBel J. noted a difference in approach between jurisdictions based on the degree to which a regime is intended to be remedial and the degree to which the system provides pure no fault benefits. When comparing Québec's legislation to other jurisdictions, LeBel J. noted that the hybrid no fault regime in Saskatchewan indicated "a different legislative intent than the one behind the Québec scheme at issue" (*Rossy* at para 31). He also distinguished the British Columbia regime in *Amos* and the Ontario one in *Vytlingam* as not dealing "with the kind of broad remedial legislation in force in Québec" or Manitoba (at para 47).

[28] Lastly, LeBel J. noted that each insurance scheme in each jurisdiction gives the context for the interpretation of the related provisions. He provided some helpful guidance for interpreting the legislation at issue in these types of cases (*Rossy*):

> [51] … Further, the words of a provision cannot be interpreted in isolation. The legislative scheme provides the necessary context for their interpretation. This contextual approach is especially relevant in the case of remedial legislation such as Québec's no-fault insurance scheme. It would be incongruous to construe broader legislation — the Act at issue in this appeal — more narrowly than the scheme at issue in *Amos*. *Vytlingam* and *Amos* are of interest from a comparative perspective but do not resolve the issue of statutory interpretation that the Court must settle in this appeal.

[29] The most recent decision from the Supreme Court relevant to the issue at hand came in *Godbout v Pagé*, 2017 SCC 18, [2017] 1 SCR 283 [*Godbout*]. In that case, the Québec no fault provisions were again examined in the context of separate claims by two persons who were injured in car crashes, received no fault benefits, and sought to sue individuals in tort for aggravating their injuries. The defendants for one of the claims consisted of medical staff who allegedly misdiagnosed and mistreated the injuries. The defendants in the other matter were police officers

who allegedly were negligent in locating the injured person after the accident, resulting in more severe injuries than he would have otherwise suffered. The issue was whether, as in *Rossy*, the no fault provisions of the Québec legislation barred the claims. The majority determined that the claims were barred. In arriving at this conclusion, Wagner J. (as he then was) commented on the *Amos* test and again discounted its value to the interpretative exercise given the difference in the statutory language used in Québec versus that in other provinces, specifically British Columbia and Manitoba: see paragraphs 63–69 of *Godbout*.

[30] As a final comment on this jurisprudence, I would observe that, although the Supreme Court has held that the *Amos* test can apply in no fault insurance regimes, it is clear that it is not as simple as determining whether such a regime is in place and then applying the exact wording of the test. While the *Amos* test can be the starting point, differences in the statutory language used in each specific jurisdiction may result in modifications to that test or its outright abandonment.

c. Saskatchewan

[31] Turning to Saskatchewan, I note that, in 1999, the *Amos* test was applied by the Court of Queen's Bench in *Meyer*, without modification to account for any differences between the *BC Legislation* and the *AAIA*. In that case, the driver of a grain truck lost control on a grid road and the truck rolled. The driver exited the vehicle, began talking to a bystander and suffered a massive heart attack from which he died. SGI denied benefits, but Hunter J. (as she then was) found that benefits were payable on appeal. Justice Hunter held that the *AAIA* must be interpreted in a "broad and liberal manner", similarly to *Amos* (*Meyer* at para 31). In so doing, Hunter J. also relied, among other cases, on *McMillan v Thompson (Rural Municipality)* (1997), 144 DLR (4th) 53 (Man CA), leave to appeal to SCC refused, [1997] SCCA No 355 (Lexis) [*McMillan*].

[32] In interpreting provisions of the *AAIA* with virtually the same wording as those in question here, Hunter J. analyzed whether the admitted "bodily injury was caused by an automobile arising out of an accident within the meaning of … the AAIA" (at para 7). In finding that it was so caused, she wrote as follows:

> [34] … The inquiry becomes: "Did the use of an automobile contribute to the bodily injuries? Was there a connection between the automobile or the use of the automobile and the bodily injuries sustained as a result of the accident?"

> [35] … In this instance, Wilfred suffered an immediate and massive heart attack causing his death immediately following a significant single vehicle motor vehicle accident. There is no evidence to say that Wilfred would have at that moment suffered a massive heart attack "but for" the shock of the roll-over accident involving his grain truck. At best, Wilfred had a condition pre-disposing him to the potential of a heart attack.
>
> [36] Accordingly, there is a connection between the automobile, the accident with the automobile and the heart attack. Examining the final result of the chain of causality, the sudden shock of the major roll-over of this truck followed almost immediately by a massive and deadly heart attack resulted in Wilfred's death. The automobile contributed to the bodily injuries. The connection between the use of the automobile and the bodily injury was sustained as a result of the accident. Accordingly, Meyer is entitled to be paid the death benefits prescribed by the AAIA.

[33] The Court of Appeal for Saskatchewan has addressed the issue directly on only one occasion. In a one-paragraph judgment in *Buckton*, this Court upheld the decision of the Commission in *K.C.* In *K.C.*, the Commission agreed with SGI's denial of benefits – on the basis of the second part of the *Amos* test – in circumstances where the driver of a vehicle had suffered a heart attack and died while he was driving. After the driver lost consciousness, the vehicle had careened into the ditch and went through two fences before coming to a stop. In affirming the decision in *K.C.*, Ottenbreit J.A. noted the use of the *Amos* test and observed that the Commission was "clearly aware that causation need not be direct or proximate" and had "correctly found on all the evidence that the two potential factors which the appellant proffered as the cause of death, i.e., chest trauma and stress of the accident, either leading to cardiac arrest, were not contributing factors to the death" (*Buckton* at para 1). The Court did not provide any further direction on the applicability or possible modification of the *Amos* test.

d. Ontario

[34] Ontario's case law provides examples of where adaptations to the *Amos* test were found to be required where the language in the statute differed from that in question in *Amos*. Ontario had a no fault automobile insurance regime in place at the time in question, but the statutory language, like the *AAIA*, was substantially different from that at issue in *Amos.* In *Chisholm v Liberty Mutual Group* (2002), 217 DLR (4th) 145 (Ont CA) [*Chisholm*], a motorist was driving on a street when he was shot by an unknown assailant. In affirming the denial of the claim by the injured motorist, the Ontario Court of Appeal noted the differences between the *BC Legislation* and that which was in effect in Ontario at the time – the relevant part of which was described as follows (*Chisholm*):

> [3] … At that time the scheme for compensating car accident victims in Ontario included payment of no fault benefits under *the Statutory Accident Benefits Schedule -- Accidents*

> *on or after November 1, 1996*, O. Reg. 403/96 (the "1996 Schedule"). To be entitled to these benefits a person had to be an insured person under a car insurance policy, and in an "accident", a defined word under s. 2(1) of the 1996 Schedule:
>
> > "accident" means an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device.

[35] Justice Laskin, writing for the Ontario Court of Appeal, pointed out that the legislation indicated an *intention* for there to be a stricter causation test than previous Ontario provisions: see paragraphs 13, 19, and 20 of *Chisholm*. He found that the language of the statute required a *direct* causal connection, as opposed to a *simple* causal connection or merely that the loss arose from the use of the vehicle as in *Amos*. This difference necessitated a significant departure from the causation part of the *Amos* test: "But the stringent causation requirement -- "directly causes" -- in the definition of accident under the 1996 Schedule means that the Amos test, or at least the causation part of that test, can no longer be used to interpret the definition" (*Chisholm* at para 20) – also see *Greenhalgh v ING Halifax Insurance* (2004), 243 DLR (4th) 635 (Ont CA) at paras 33–46, leave to appeal to SCC refused, [2004] SCCA No 461 (Lexis) [*Greenhalgh*].

[36] The reasons in *Chisholm* and *Greenhalgh* are not directly applicable to this appeal, given that the relevant Ontario provision used *directly* in front of *causes*, whereas the definition of "accident" in the *AAIA* has no such modifier preceding *caused*. They are, however, illustrative of the ability and need to adjust the *Amos* test to meet the legislative context.

e. Manitoba

[37] Turning to Manitoba, the leading case on the application of the *Amos* test is *McMillan*. In that instance, the injured persons were driving on a road and reached a partially washed out bridge, where there were no warning signs. They drove off the bridge, crashed, and were injured. The injured persons received no fault benefits but then sought to sue the municipality for damages. The municipality resisted the action by relying on the no fault system, which prohibited lawsuits for damages sustained in automobile accidents. The portions of the Manitoba legislation in question were as follows (*McMillan*):

> [36] As noted, s. 70(1) is the definition section. The definitions which require examination are: "accident," "bodily injury" and "bodily injury caused by an automobile"
>
> > "accident" means any event in which bodily injury is caused by an automobile;

> "bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death;
>
> "bodily injury by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile … .
>
> (Original emphasis omitted)

[38] Each of the three judges on the panel in *McMillan* provided separate concurring reasons in which they found that no fault benefits were payable, barring the action in tort. Justice Helper acknowledged that "caused by" in the Manitoba legislation was narrower than "arises from", as used in the *BC Legislation* in question in *Amos*, but noted that Manitoba's statute was intended to provide a comprehensive no fault insurance scheme and, as such, any interpretation given should not "defeat many of the objectives identified by the legislators" in drafting the statute (*McMillan* at para 67): see, generally, paras 65–67 and 92. Justice Helper concluded that a court is not "required to determine the proximate cause of an accident" just because the statute uses the phrase *caused by* since this would give similarly situated victims different remedies. In summary, Helper J.A. concluded as follows:

> [105] All of the above-noted cases support the reasoning that where the words "caused by" are used, there must be some link between the injuries sustained and the use of the automobile. An ordinary reading of s. 70(1) leads to the same conclusion. The legislation does not require more. It does not seek out causation in terms of the accident. It specifically eliminates the concept of fault. In light of the elimination of fault, there is no support for the submission that the proximate cause of an automobile accident determines the application of Part 2.
>
> [106] Part 2 applies where there is a direct relationship between the automobile being used and the injuries suffered. Where Part 2 applies, other action for the recovery of damages for personal injury is barred. While there must be a connection between the automobile and the injuries, judicial cause, or proximate cause is not required by the legislation. The legislation does not address the cause of the accident, only the cause of the injuries.

[39] The other two judges on the panel generally agreed with Justice Helper's reasons. Justice Philp took issue with what he saw as the lower-court judge focusing "on a fault-finding inquiry" instead of determining whether there was a sufficient causal connection (at para 3). In his view, the phrase *caused by* should still be given a broad and liberal interpretation, and he appears to have adopted the *Amos* test without modification and without addressing the distinction between *caused by* and *arises from*: see paras 25–26.

[40] In Kroft J.A.'s view, the error was that the lower-court judge did "not seem to have fully considered that the meaning of 'caused by' necessarily takes on a different, though still important,

meaning once the traditional considerations of fault and negligence are made irrelevant" (at para 128). He noted that the words *caused by* require a "consequential relationship between the use of the automobile and the injuries" since there still needed to be some causal connection (at para 129). Justice Kroft was not willing "to say that any injury suffered in or in some remote way involved with an automobile is necessarily caused by it or the use of it" (at para 129).

[41] In *Mitchell v Rahman*, 2002 MBCA 19, 209 DLR (4th) 621 [*Mitchell*], the Manitoba Court of Appeal considered *McMillan* and expanded upon it. Mr. Mitchell had suffered a shoulder injury during a motor vehicle accident. After going to the hospital, he alleged he was misdiagnosed and subsequently suffered permanent shoulder impairment as a result of the misdiagnosis. Mr. Mitchell asserted that his injury was caused by the motor vehicle accident, and thus he should receive no fault benefits. The question examined was whether the relationship between the use of the automobile and the injuries were "more than merely incidental or fortuitous" or whether there was a consequential connection between the loss and "the use of an automobile" (at para 35). Justice Philp, writing for the Court this time, reiterated that *caused by* is less broad than *arises from* and affirmed that the words of the legislation at issue were different than those considered in *Amos*: see paragraphs 36–38. Justice Philp concluded that the loss was not caused by the accident and not covered by the no fault regime:

> [57] The conclusion I have reached is consistent with the grammatical and ordinary sense of the words "caused by … the use of an automobile". The alleged negligence of the defendants arose subsequent to the plaintiff's use of an automobile. The injuries that he says resulted from medical mistreatment had nothing to do with his use of an automobile or to the automobile accident that had occurred earlier. Those injuries did not originate from, grow out of, or flow from his use of an automobile. Although it is a question that need not be decided on this appeal, I think it is doubtful that the application of the more generous interpretation of the phrase "arising out of" adopted in *Amos v. Insurance Corp. of British Columbia* would lead to a different conclusion.

[42] *McMillan* and *Mitchell* must be read with a note of caution when considered outside of the specific statutory context in which they were decided. For example, in *Godbout*, the Supreme Court commented on the utility of *Mitchell*, which had relied heavily on *McMillan*:

> [68] … *Mitchell* is not a persuasive authority for interpreting the words of the [Québec] Act. First … it was decided before this Court's decision in *Rossy*. Second, the statutory provisions being compared here are not identical: unlike s. 5 of the [Québec] Act, s. 73 of the *Manitoba Public Insurance Corporation Act* provided that compensation was payable "regardless of who is responsible *for the accident*". This wording of the Manitoba legislation seems to have limited its scope. Finally, in *Mitchell*, the Manitoba Court of Appeal applied the causation test that had been formulated in *Amos*. But LeBel J.

> specifically distinguished *Amos* in *Rossy*, noting that it had not concerned the same kind of broad remedial legislation as that in force in Québec, that the two legislative schemes were different and that *Amos* did not resolve the issue of interpretation of the provisions of the Act.
>
> (Emphasis in original)

[43] However, even after considering these comments from *Godbout*, I still find *McMillan* and *Mitchell* to be of assistance in interpreting the *AAIA*.

[44] In 2018, in *Smith*, the Manitoba Court of Queen's Bench was tasked with interpreting the same legislative provisions from *McMillan* and *Mitchell* in circumstances where the driver of a vehicle parked in her own driveway, exited her car, got her foot caught under her neighbour's property-line fence as she turned to close her car door, and suffered injuries when she fell. She sued her neighbour, who defended by asserting that the no fault automobile insurance scheme, under *The Manitoba Public Insurance Corporation Act*, CCSM c P215 [*MB Legislation*], prevented her from doing so. The matter was brought as a special case to the Court of Queen's Bench to resolve this issue.

[45] In the result, Dewar J. determined that the no fault provisions of the *MB Legislation* did not apply. As expected, the discussion started with the *Amos* test and commented on the separate concurring opinions in *McMillan*. But, Dewar J. ultimately determined the following:

> [54] … The question in the current case is whether the injuries sustained by the plaintiff are connected enough to the use of the vehicle to justify the plaintiff's compensation under the government no fault program.
>
> …
>
> [63] … I simply say that injuries sustained in a fall during a person's exit from a vehicle should not automatically be classified as "injuries caused by the use of an automobile". In my view, in this case, the use of the plaintiff's automobile was only a fortuitous prelude to her sustaining injuries in the fall. In my opinion, there should be no coverage under Part 2 of the *Act* for these injuries.
>
> …
>
> [67] It might be argued that the use of a motor vehicle starts during entry and ends after the doors are closed following disembarking. In my view, it would be wrong to set such a definitive approach. There still needs to be an examination as to the actual manner in which the injuries were sustained. Here, the injuries were sustained because the plaintiff fell over the fence, not because she had travelled in her car.
>
> [68] If one truly considers the mischief which the legislature intended to address when it enacted the Part 2 benefits legislation, the kind of accident in this case should not be covered. Part 2 benefits were never intended to create a universal disability compensation plan for society. I recognize that courts in past cases have sometimes extended the ambit

> of liability insurance coverage and no fault benefit plans in order to temper the unfortunate circumstances of a suffering claimant. However, although there is a temptation to do so, the Part 2 provisions should not be extended as if they were part of a global insurance plan. …
>
> [69] Similarly, this is an "automobile" no fault insurance plan, and hence the mere fact that an automobile has some proximity to the incident (in this case the "fall") is not enough. In close cases, the question should repeatedly be asked: Is the situation in which the injuries were sustained the type of situation that a person, thinking liberally, would expect would be covered by a no fault automobile accident insurance plan? Here, in my respectful opinion, the answer is no.

[46] Based on my reading of *McMillan*, *Mitchell*, and *Smith*, a modified *Amos* test was employed in Manitoba under legislation where the provisions in question are nearly identical to those used in the *AAIA*.

3. Modifying the *Amos* test for use in Saskatchewan

[47] In this province, the purpose of Saskatchewan's hybrid no fault regime was discussed in *Cebryk v Paragon Enterprises (1984) Ltd. (Armstrong's Physiotherapy Clinic)*, 2010 SKCA 146, 326 DLR (4th) 692 [*Cebryk*], and in *Acton v Rural Municipality of Britannia No. 502*, 2012 SKCA 127, [2013] 4 WWR 213 [*Acton*]. The purpose of the regime is described thus in *Cebryk* and *Acton*:

Cebryk	***Acton***
[7] The original objective of the *AAIA* was to create a compulsory universal insurance fund into which all drivers resident in Saskatchewan and all owners of motor vehicles operated within the Province would pay a premium when they obtained a driver's licence or vehicle licence required to operate a motor vehicle in Saskatchewan. The overarching purpose of the fund was to provide: (a) specific benefits in relation to injuries suffered in or as a consequence of a motor vehicle accident regardless of whether the insured negligently caused the accident; and (b) insurance coverage for liability claims related to the operation or ownership of a motor vehicle. … [50] The declared and otherwise obvious intention of the 1994 Amendment was to implement a no fault insurance scheme to provide a person injured in a motor vehicle accident with immediate access to a broad range of benefits without regard to who was at fault, and thereby avoid costly court proceedings associated with proving causation or establishing the level of compensation to which the	[19] The no-fault provisions of the *AAIA* came into force by way of *The Automobile Accident Insurance Amendment Act, 1994*, S.S. 1994, c. 34 (the "*1994 Amendment*"). Its declared and otherwise obvious purpose was to implement a modified no-fault insurance scheme. It is considered to be "modified no-fault" because it is designed to provide a person injured in a motor vehicle accident with immediate access to a broad range of benefits without regard to who was at fault, while preserving the right of an injured insured to bring an action to recover damages for specific economic losses. The modified no-fault scheme also sought to avoid costly court proceedings associated with proving causation and establishing the level of compensation to which an injured insured or third party was entitled.

Cebryk	***Acton***
injured insured or third party is entitled. These objectives are accomplished by the payment of compensatory benefits out of the no-fault insurance fund to the injured insured and others entitled to benefits under the *AAIA*.	

[48] Saskatchewan used a no fault system, with some exceptions, from 1994 until 2002, at which point a full tort option was added. Saskatchewan has a hybrid system under which individuals can elect tort coverage or have no fault coverage by default with some limited additional rights. Mr. Sasakamoose did not elect tort coverage nor seek to access any exceptions and, therefore, only the no fault system is in play in the matter at hand.

[49] As determined in *Buckton*, and to an extent in *Cebryk* at paragraph 34, the *Amos* test applies in Saskatchewan. However, as established by my canvas of the above jurisprudence, its formulation must account for the fact that the provisions of the *AAIA* are not the same as the then existing *BC Legislation* at stake in *Amos*. The required modifications have not previously been addressed by this Court.

[50] As a reminder, the relevant provisions of the two Acts being compared are as follows:

AAIA	***BC Legislation***
2(1) In this Act: (a) **"accident"** means any event in which property damage or *bodily injury is caused by a motor vehicle*; … (h) **"bodily injury caused by a motor vehicle"** means *bodily injury caused by a motor vehicle, by the use of a motor vehicle* or by a load … … 101(1.1) This Part applies to any person who sustained bodily injury *caused by a motor vehicle arising out of an accident* … .	**79**(1) … the corporation shall pay benefits to an insured in respect of death or injury *caused by an accident that arises out of* the ownership, use or operation of a vehicle … .
	(Emphasis added)

[51] While similar, the *BC Legislation* provided a wider scope for a finding of causation, in that it covered injuries for an accident that *arises out of the use of a vehicle*, whereas the *AAIA* is more

restrictive and only covers bodily injuries *caused by a vehicle arising out of an accident*: with accident being defined as *an event in which bodily injury is caused by a motor vehicle*. While the phrase *arising out of* also appears in the *AAIA*, its use is significantly different given the reference to an *accident* and the definitions that flow from that. This is a distinction that must be kept in mind when applying the *Amos* test. The nature of this difference in language was commented on in the jurisprudence reviewed above and was specifically noted by Major J. in *Amos*:

> [21] … With respect to causation, it is clear that a direct or proximate causal connection is not required between the injuries suffered and the ownership, use or operation of a vehicle. The phrase "arising out of" is broader than "caused by", and must be interpreted in a more liberal manner. A formulation of the causation principle is found in *Kangas v. Aetna Casualty & Surety Co.*, 235 N.W.2d 42 (1975) [Michigan, USA, CA] … . That court recognized that the words "arising out of" have been viewed as words of much broader significance than "caused by", and have been said to mean "originating from", "having its origin in", "growing out of" or "flowing from", or, in short, "incident to" or "having connection with" the use of the automobile.

[52] The causation test as articulated in *Amos* provides that there must be "*some* nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the appellant's injuries and the ownership, use or operation of his vehicle" (emphasis in original, at para 17). Merely incidental or fortuitous connections will not suffice. As will be recalled, Mr. Amos's injuries did *arise* from the use of his motor vehicle, in the sense that the individuals trying to steal the van only injured him because he was driving it and they wanted it. But the loss did not result from his use of his van in the same way that it would have had it flowed from a motor vehicle accident.

[53] The reasons in *Amos* and the subsequent Supreme Court jurisprudence leads to the conclusion that statutes using the phrase *arising from* indicate a broader test than ones that employ *caused by*. Justice Major made this point explicitly in *Amos.* Accordingly, the language considered in *Amos* dictated a wider application of the no fault provisions than the comparable ones found in the *AAIA*. This is not to say that a person in Mr. Amos's position in Saskatchewan would not have received benefits under the *AAIA*, but a different test would apply in making that determination.

[54] The language used in the *AAIA* is not as restrictive as that used in Ontario, given that *directly* does not modify *caused* in the *AAIA*, as it does in the Ontario definition. This means that the test in Saskatchewan is wider than that which operates in Ontario.

[55] In *McMillan* and *Mitchell*, as noted above, legislation very similar to that of Saskatchewan's was interpreted. Those cases implicitly narrowed the *Amos* test, although the reasons do not explicitly state that they are doing so. In reaching its conclusions, the Manitoba Court of Appeal spoke of the necessity of a "consequential connection" (*McMillan* at para 137 and *Mitchell* at para 35). Of course, the determinations of the Manitoba Court of Appeal are not binding on this Court; but, in my view, a similar restriction in the test, using wording to the same effect as in Manitoba, is warranted in Saskatchewan.

[56] Based on the distinctions in the provisions of the *AAIA*, as compared to the *BC Legislation* at issue in *Amos*, and the requirement that the test must accord with the legislative language and purpose in the jurisdiction where it is being applied, I would modify the *Amos* test for use in Saskatchewan and state it in the following terms:

(a) Did the accident result from an ordinary and well-known use to which motor vehicles are put?

(b) Is there a direct or consequential causal relationship, one that is more than merely incidental or fortuitous, between the claimant's injuries and the use of a motor vehicle?

[57] This test fits with the language used in the above-identified portions of the *AAIA*, read in their entire context and in their grammatical and ordinary sense. It achieves the purpose of the legislative scheme by providing a wide scope for no fault benefits but limits their availability to injuries that are truly caused by the *use* of a motor vehicle as opposed to those having a more remote connection. It also accounts for the differences between the *AAIA* and the legislation at issue in *Amos*. This provides for an assessment that is more restrictive than the *Amos* test, but that narrower focus is what the wording of the legislation requires.

4. Application of the modified *Amos* test

[58] The first part of the reformulated *Amos* test is easily satisfied and was not in contention. The motor vehicle was transporting Mr. Sasakamoose as a passenger, which is an ordinary and well-known activity to which such a conveyance is put: *Amos* at para 21 and *Vytlingam* at paras 16–23.

[59] The second part of the test is where Ms. Umpherville cannot succeed. There is no direct or consequential causal relationship between Mr. Sasakamoose's injuries and the use of the motor vehicle. The use of the car did not cause his injuries; it was the force used by the police in effecting the arrest, along with Mr. Sasakamoose's role in the melee, that did so. While there can be more than one cause of any particular injury, the use of the motor vehicle is not one of them in the matter at hand. Further, as noted by the Commission, "The use or operation of the motor vehicle was merely incidental or fortuitous to the injuries sustained" (*Commission Decision* at para 21). The motor vehicle was the situs of the injuries, but its use was not a cause of them under the modified *Amos* test. The connection is too tenuous. Mr. Sasakamoose's mere presence in the vehicle is not sufficient to establish the necessary causal connection. As such, the Commission did not err in dismissing the appeal.

VI. CONCLUSION

[60] The appeal is dismissed. SGI did not seek costs so there shall be no costs of the appeal or the leave application.

"Tholl J.A."
Tholl J.A.

I concur. "Kalmakoff J.A."
Kalmakoff J.A.

I concur. "McCreary J.A."
McCreary J.A.