CITATION: Botbyl v. Heartland Farm Mutual Inc. 2025 ONSC 3349
DIVISIONAL COURT FILE NO.: 276/24
DATE: 20250729

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Sachs, Backhouse and S.T. Bale JJ.

BETWEEN:	
Andrew Botbyl and Tracey Yaromich Insureds	*Peter Cho*, for the Insureds
– and –	
Heartland Farm Mutual Inc. Respondent	*Philippa Samworth* and *Youleel Ataalla*, for the Respondent
	HEARD at Toronto: January 22, 2025

REASONS FOR JUDGMENT

H. SACHS AND BACKHOUSE JJ.

Overview

[1] This appeal concerns a reconsideration decision by the Licence Appeal Tribunal (the "LAT") which overturned the decision of LAT Adjudicator Brian Norris that granted the Insureds relief from forfeiture of their insurance policy under s. 129 of the *Insurance Act* R.S.O. 1990, c. I.8.

[2] Andrew Botbyl and Tracey Yaromich (the "Insureds") sustained serious injuries from a motorcycle accident. The Insureds had two automobile insurance policies at the time of the collision: the motorcycle was insured under a standard policy with Economical Insurance ("Economical"), and their other vehicles were insured under a policy with Heartland Farm Mutual Inc. ("Heartland") which included enhanced benefits. Heartland's policy provides significantly greater coverage for the Insureds, covering up to $1 million in medical,

rehabilitation and attendant care benefits over their lifetimes and up to $800 per week in income replacement benefits. Their standard mandatory insurance coverage under Economical provides a much smaller amount — up to $65,000 in total in medical rehabilitation, and attendant care and $400 per week in income replacement.

[3] Due to an innocent mistake, the Insureds submitted their Application for Accident Benefits ("OCF-1") to their motorcycle insurer, Economical, having been advised by their insurance broker that they should apply to Economical first and they would be able to access their "add-on" benefits through Heartland later. Heartland had notice of the collision and of the Insured's intention to pursue accident benefits with them prior to the OCF-1 being sent to Economical but did not advise the Insureds that they must apply to Heartland and only them instead of Economical or Heartland would refuse to pay the optional benefits. After the OCF-1 was sent to Economical, Heartland denied the claim on the basis that a particular endorsement that applies to all insurance contracts that include optional benefits ("OPCF-47") prevented Heartland from providing optional benefits to an insured who has already applied for accident benefits with another insurer.

[4] The Insureds brought an application to the Superior Court seeking relief from forfeiture and entitlement to claim the optional accident benefits under the Heartland policy. On May 25, 2021, Turnbull J. denied the application after concluding that jurisdiction lay with the LAT under S. 280 of the *Insurance Act*. Turnbull J. also stated that if he was wrong, he would have no hesitation granting the relief, given the circumstances of the case.

[5] The Insureds then applied to the LAT for the same relief. Each Insured brought a separate application and, thus, the LAT issued separate but identical decisions in relation to each Insured. These reasons will treat both decisions as one decision. Adjudicator Norris in his decision dated August 2, 2023 (the "Decision") granted relief from forfeiture under s. 129 of the *Insurance Act*. He found that the factors to consider when deliberating on whether to grant relief from forfeiture all weighed in favour of granting the relief requested. While he noted that s. 129 uses the term "court", he found that it would be unfair and inconsistent with the consumer protection mandate of the statutory accident benefits regime to exclude the LAT from this definition as it has exclusive jurisdiction to adjudicate these disputes.

[6] Heartland applied for a reconsideration of the Decision. On April 5, 2024, Vice-Chair Johal granted this request (the "Reconsideration Decision") on the basis that Adjudicator Norris made four errors, including in finding that the term "court" in s. 129 of the *Insurance Act* applied to the LAT. The Reconsideration Decision rescinded the Decision and found that the Insureds were not entitled to relief from forfeiture.

[7] This is an appeal from the Reconsideration Decision. For the reasons that follow, we would allow the appeal, set aside the Reconsideration Decision and restore the underlying Decision of Adjudicator Norris granting the Insureds relief from forfeiture pursuant to s. 129 of the *Insurance Act*, so they can initiate an accident benefits claim with Heartland. Fundamental to our decision is the fact that the *SABS* is consumer protection legislation, which must be interpreted in a manner consistent with its objective—to reduce economic dislocation and hardship for victims of motor vehicle accidents.

Background

[8] The accident occurred on June 26, 2020. The Insureds, who are spouses of one another, sustained serious injuries while driving their motorcycle. Their motorcycle was struck by the driver of a motor vehicle who turned left in front of them and who was subsequently charged with careless driving. As a result of the collision, Andrew Botbyl suffered a skull fracture, traumatic brain injury, nasal bone fracture, lumbar spine fracture, several lacerations and injuries to his legs and face. Tracey Yaromich suffered a traumatic brain injury, rib fractures, a thoracic spine fracture and a fractured right tibia.

[9] At the time of the collision, the Insureds had two valid automobile insurance policies: one for their motor vehicles with Heartland and one with Economical for their motorcycle. As noted above, the Heartland policy provides increased optional benefits substantially greater than the standard policy with Economical.

[10] Under the statutory benefits regime, where an insured purchases optional enhanced coverage, the insurer shall issue an OPCF 47 endorsement. OPCF 47 allows a person with optional enhanced statutory benefits coverage under a motor vehicle insurance liability policy to claim accident benefits under that policy, even though the priority payment rules under the statutory accident benefits regime might otherwise require that person to claim accident benefits under another policy. However, OPCF 47 specifically provides that this can only be done if the insured agrees not to make a claim for SABS under another policy.

[11] The Insureds were hospitalized from the injuries they sustained in the collision. As a result, their daughter, Jasmine, contacted their insurance broker to report the collision and commence the process of making accident benefits claims. The Insureds had never submitted accident benefits claims before. Jasmine was advised to apply to the insurer that covered the motorcycle, Economical. Jasmine then contacted Economical and informed them about her parents' "add-on" increased optional benefits with Heartland. Economical counselled her to submit an application to Economical and to seek additional coverage from Heartland at a later time. Jasmine had a second conversation with Economical' s claim adjuster, Lisa Rath, who reiterated the advice that her parents would still be able to access the "add-on" benefits from Heartland after accessing benefits through Economical.

[12] On July 9, 2020, the Insureds' insurance broker notified Heartland of the Insureds' motor vehicle collision, that the vehicle involved in the collision was a motorcycle insured with Economical and that this was being reported to Heartland because its policy had both Insureds listed as policyholders and had enhanced "optional" accident benefits. As such, Heartland had notice of the collision and the Insureds' intention to pursue accident benefits with it within 11 days of the collision.

[13] An Accident Benefits Claims Assistant at Heartland, Mimi Fennell, conducted an Accident Benefits Callout interview by phone with Andrew Botbyl on July 10, 2020, during which Andrew advised that he had optional benefits with Heartland and an automobile policy with Economical. Ms. Fennell was not aware of the requirement for the Insureds to submit their OCF-1 with Heartland and not Economical if they wished to access their optional

benefits. Heartland did not advise or explain to Andrew that he must apply to Heartland and only them instead of Economical, or they would forfeit their optional benefits.

[14] Ms. Fennell communicated the information relating to the Insureds' potential claim shortly thereafter to a Senior Accident Benefits Specialist at Heartland, Shirley Breig.

[15] On July 13, 2020, Ms. Brieg, on behalf of Heartland, contacted Andrew Botbyl. Andrew inquired about his optional benefits with Heartland and informed Ms. Brieg that she should contact Ms. Donna Wardell at Smitiuch Injury Law. Ms. Brieg did not advise or explain to Andrew that he and his spouse must apply only to Heartland or Heartland would refuse to pay their optional benefits. That same day, before Ms. Brieg spoke to Ms. Wardell, an OCF-1 for the Insureds was faxed to Economical. On July 16, 2020, Ms. Breig spoke with Ms. Wardell. Ms. Wardell informed Ms. Breig that the OCF-1 was faxed to Economical and asked whether she should send the same paperwork to Heartland. Ms. Brieg advised her not to submit the OCF-1 to Heartland – because an application had already been submitted to Economical, it made no sense to do so.

[16] On July 17, 2020, Economical emailed the Insureds to inform them that they did not have optional benefits with Economical, but that those optional benefits were available with Heartland.

[17] On July 30, 2020, Heartland confirmed that Andrew Botbyl had optional benefits with it, but denied entitlement on the basis that the Insureds sent the OCF-1 to Economical first, and the OPCF 47 endorsement within the insurance contract prevented Heartland from providing the optional benefits to an insured who has already applied for any accident benefits with another insurer.

[18] Counsel for the Insureds wrote to Heartland on August 7, 2020, and demanded that it accept their claims. The letter explained that they had been misinformed and had inadvertently applied for benefits from Economical. Heartland, however, maintained its position and denied their claim for enhanced benefits.

Procedural History

Endorsement of Turnbull J. — May 25, 2021

[19] The Insureds brought an application to the Superior Court seeking relief from forfeiture and entitlement to claim the optional accident benefits under the Heartland policy. Turnbull J. denied the application on the basis that exclusive jurisdiction lay with the LAT under s. 280 of the *Insurance Act.* Section 280 provides*:*

> **Resolution of disputes**
>
> **280** (1) This section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled. 2014, c. 9, Sched. 3, s. 14.

Application to Tribunal

(2) The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1). 2014, c. 9, Sched. 3, s. 14.

Limit on court proceedings.

(3) No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review. 2014, c. 9, Sched. 3, s. 14.

Resolution in accordance with Schedule

(4) The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*. 2014, c. 9, Sched. 3, s. 14.

[20] Turnbull J. found that the facts alleged by the Insureds raise exactly the issues specified in s. 280(1) of the *Insurance Act*: "the resolution of a dispute in respect of an insured person's entitlement to statutory accident benefits or in respect to the amount of statutory accident benefits to which an insured person is entitled."

[21] Turnbull J. went on to state that if he was wrong, he would have no hesitation granting the relief, given the circumstances of the case and that Heartland's conduct in refusing to allow the Insureds the right (for which they paid premiums to Heartland) to withdraw their application to Economical and to reapply to Heartland was unreasonable and unfair. He pointed out that as an insurer, Heartland had a duty of fair dealing with its insured, that its conduct was not commendable, and he declined to grant them costs.

[22] Following the release of Turnbull J.'s decision, the Insureds filed a notice of appeal to the Court of Appeal. Shortly thereafter, they filed a motion to stay the appeal pending the outcome of the LAT application on whether relief from forfeiture was available. Zarnett J.A. denied the motion to stay the appeal, finding that Turnbull J.'s decision did not decide that question one way or the other. The Insureds then abandoned their appeal.

The LAT Decisions

The Decision (Adjudicator Norris-August 2, 2023)

[23] Following Turnbull J.'s decision, the Insureds applied to the LAT seeking the same relief. Heartland argued that LAT had no jurisdiction to grant equitable relief from forfeiture under s. 129 of the *Insurance Act*, citing decisions in which the Tribunal determined that it had no power to grant equitable remedies. Section 129 provides:

Relief from forfeiture

129. Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be

> done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just.

[24] The Decision found that the Tribunal had the jurisdiction to provide equitable relief in this "extraordinary situation" given that the *Schedule* "does not prohibit such a remedy." This conclusion was reached after finding that Heartland's precedents were distinguishable, unpersuasive, and non-binding. The Decision relied instead on the Ontario Court of Appeal's *obiter* remarks in *Continental Casualty Company v. Chubb Insurance Company of Canada,* 2022 ONCA 188 at para. 108 where it stated that "the potential unfairness arising from an insured's errors when applying for SABS may, in some cases, be corrected by invoking relief from forfeiture as happened in this case".

[25] In considering whether the Insureds met the test for relief from forfeiture, the Decision found that the following factors weighed in favour of the Insureds:

> 1) There was no evidence of dubious behaviour by the Insureds or their counsel throughout the process. Rather, they made an innocent mistake when applying for accident benefits that Heartland immediately attempted to capitalize on by denying priority of the claim and stating that it would not accept the Insureds' claims.
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> 2) Within fewer than four weeks of making the mistake, the Insureds made a written request for Heartland to reconsider their position and Heartland refused.
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> 3) The gravity of the breach also weighs in favour of the Insureds. Permitting Heartland to avoid paying accident benefits due to the Insureds' error would provide a windfall for Heartland—it collected premium benefits without having to uphold the contractual obligation relative to those payments. Whereas, permitting the Insureds to rescind their claim with Economical and file a fresh claim with Heartland, causes no additional harm as Heartland would otherwise have been liable for the claim, but for the Insureds' innocent error.
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> 4) The disparity between the value forfeited and the damage caused also weighed in favour of the Insureds.

[26] While the Decision noted that s.129 uses the term "court", thus seeming to exclude tribunals, it reasoned that excluding the LAT from this definition would be unfair, since it is the only forum where these disputes could be adjudicated. Excluding the LAT from the definition of "court" would be inconsistent with the consumer protection mandate of the *Schedule* and of the *Insurance Act* more broadly.

Reconsideration Decision (Vice-Chair Johal - April 5, 2024)

[27] Heartland sought reconsideration of the Decision and requested that it be reversed. The Reconsideration Decision granted this request on the basis that the Decision contained four errors of law.

[28] First, it found that the Tribunal erred in establishing jurisdiction based on its view that the *Schedule* did not prohibit it. This was a clear attempt to fill a gap in the legislation, which is impermissible as the Tribunal is a creature of statute. Second, insofar as it relied on *obiter* comments from *Continental Casualty* and third, Turnbull J.'Endorsement, this was also an error. *Obiter* remarks are not essential to a given holding and neither decision, particularly *Continental*, bore on the immediate issues before the LAT. Finally, it found that the term "court" in s. 129 of the *Insurance Act* has repeatedly been found not to include the LAT or other tribunals. Adjudicator Norris erred in concluding otherwise.

Jurisdiction and Standard of Review

[29] Section 11(1) of the *Licence Appeal Tribunal Act*, S.O. 1999, c. 12, Sched. G, allows parties the right to appeal the LAT's decisions to the Divisional Court.

[30] Section 11(6) of the same act makes it clear that the appeal must be based on a question of law alone.

[31] As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, questions of law in an appeal are to be determined on a standard of correctness.

Analysis

The purpose of the SABS

[32] In *Tomec v. Economical Mutual Insurance Co.*, 2019 ONCA 882, 148 O.R. (3d) 438, the Court of Appeal set out the overriding principles to be applied in interpreting the *SABS*. In doing so the Court adopted the articulation of those principles set out in *Arts (Litigation Guardian of) v. State Farm Insurance Co.* (2008), 91 O.R. (3d) 394 (S.C.J.), at para. 16, where the Court states:

> 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. (emphasis added).

[33] *Tomec* also states that faced with a choice between an interpretation of the statute "that furthers the public policy objectives underlying the *SABS* and one that undermines it, the only reasonable decision is to side with the former": para. 45.

The History and Purpose of OPCF 47

[34] In *Continental v. Chubb*, 2022 ONCA 188, the Court of Appeal reviews the history of OPCF 47. OPCF 47 was approved by the Commissioner of Insurance on December 3, 1996 pursuant to s. 227 of the *Insurance Act*, which, as put by the Court of Appeal at para 71, "permits the Chief Executive Officer to approve an endorsement where any provision of Part VI of the Act is inappropriate to the requirements of a contract with the result that the approved endorsement is effective in accordance with its terms even if its terms are inconsistent with or vary a provision of Part VI…"

[35] Section 268 of the *Insurance Act* sets out priority of payment rules for determining the insurer against which a person has recourse to claim their SABS. As summarized by the Court in *Continental* at para. 70: "Subject to the requirement that the person not claim SABS under another policy, OPCF 47 allows a person with optional enhanced SABS coverage under a motor vehicle insurance liability policy to claim SABS under that policy even though the s. 268 priority of payment rules may require the person to claim SABS under another policy."

[36] After OPCF 47 was approved, the Financial Services Commission of Ontario, which oversaw the administration of the SABS at that time, issued two bulletins that shed light on the purpose of OPCF 47. Those bulletins are summarized in *Continental* as follows:

> [73] FSCO Bulletin A-17/96 was issued soon after OPCF 47 was approved "to assist to insurers in interpreting s. 268 of the [Act]" The Bulletin notes that the insurance industry had expressed concern that certain interpretations of the Act could frustrate the objectives of optional statutory accident benefits.
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> [74] Bulletin A-17/96 states, in part, that "a key objective of the *Automobile Insurance Rate Stability Act, 1996 (Bill 59)* [was] to lower the cost of compulsory automobile insurance by establishing" basic mandatory SABS coverage suitable for most consumers but allowing for the purchase of optional enhanced benefits for consumers who required such coverage. The optional enhanced coverage was intended to be portable, meaning it would apply to the consumer, their spouse and dependent(s) and any listed driver on the policy, whether the accident took place in the vehicle covered by the policy or any other vehicle. Further, the "rate filings of insurers for the optional statutory accident benefits reflects this portable aspect of the coverage."
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> [75] However, because certain interpretations of the Act may not reflect the intended portability, "endorsement form OCPF 47, Agreement Not to Rely on SABS Priority of Payment Rules" was developed to "protect purchasers of optional statutory accident benefits from different interpretations of the Act which may result in denial of coverage." An example of this potential was explained as follows:

> An example is a consumer who has purchased his or her own policy with optional statutory accident benefits. The consumer is injured in an accident while occupying the vehicle of a spouse or dependent who is insured under a separate policy without optional statutory accident benefits, to claim under the spouse's or dependent's policy instead[under s. 268(5.2)]. As a result, the consumer who has purchased optional statutory accident benefits would not be able to claim these benefits.
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> [76] FSCO Bulletin A-10/97 was issued on November 19, 1997, as a supplement to Bulletin A-17/96 because of "questions about how [OPCF 47] should be interpreted in certain situations." Bulletin A-10/97 notes that OPCF 47 was mandated, in part, to ensure insured persons are able to access optional SABS regardless of how the priority of payment rules set out in subsections 268(2), (4), (5), (5.1) and (5.2) of the Act are interpreted. Under the heading "Effect of the Endorsement", Bulletin A-10/97 states, in part, the following:

The OPCF 47 provides that if optional accident benefits are purchased and are "**applicable**" to a person under the policy, the insurer will permit the insured person to claim **both mandatory accident benefits and optional accident benefits under that policy.** The insurer will not deny benefits on the basis that the priority of payment rules set out in section 268 of the Act provide that another insurer is liable to pay the mandatory accident benefits.

> The endorsement also provides that where an insured person claims both mandatory accident benefits and optional accident benefits from an insurer, the insured person agrees not to apply for SABS under another policy. This is to prevent double compensation. [Emphasis in original].
>
> [77] Bulletin A-10/97 goes on to explain that an optional accident benefit would be "applicable" if the insured person was involved in an accident and met the eligibility criteria for the benefit as set out in the SABS [Schedule] and provides an example.

[37] It is clear from the above that the purpose of OPCF 47 was to enhance the ability of insureds to access their optional benefits coverage. Further, the purpose of the requirement that the insured agrees not to apply for SABS under another policy is to prevent double compensation.

***Section 129 of the* Insurance Act**

[38] The focus of this appeal is s. 129 of the *Insurance Act* and whether the LAT can apply it to remedy the unfairness that has occurred in this case. We pause here to note that Heartland essentially conceded in oral submissions that the result of the Reconsideration Decision may well be regarded as harsh and unfair. The Insureds, who are severely impaired as a result of the accident which is the basis of their entitlement to the benefits at issue in this

proceeding, sought and followed the advice of their insurer as to how to proceed and are now unable to access millions of dollars in benefits.

[39] For ease of reference, s. 129 is reproduced again:

> **Relief from forfeiture**
>
> **129.** Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just.

[40] Where the Decision and the Reconsideration Decision part ways is on the question of whether the LAT has the jurisdiction to apply s. 129. Heartland argues that the Reconsideration Decision was correct in finding that it does not. Heartland also takes the position that even if the LAT does have jurisdiction to apply s. 129, it would not help the Insureds. This is the first submission we will address.

Section 129 does apply.

[41] Heartland alleges that, even if the LAT had jurisdiction to apply s. 129, it is not available to the Insureds. In doing so, it relies on the Court of Appeal's decision in *Williams v. York Fire & Casualty Insurance Company*, 2007 ONCA 479, 86 O.R. (3d) 241. Heartland did not advance this argument in the proceedings below. In *Svia Homes Limited v. Northbridge General Insurance Corporation*, 2020 ONCA 684, 7 C.C.L.I. (6th) 1, at para. 25, the Court of Appeal provided guidance as to whether a new argument should be considered for the first time on appeal:

> The rationale for the general rule that appellate courts will not entertain an entirely new issue on appeal is that "it is unfair to spring a new argument upon a party at the hearing of an appeal in circumstances in which evidence might have been led at trial if it had been known that the matter would be an issue on appeal." The party seeking to raise the new argument must persuade the appellate court that the facts necessary to address the point are before the court "as fully as if the issue had been raised at trial", a burden more easily met if the issue is one of law. The decision whether to grant leave to allow a new argument is discretionary, "guided by the balancing of interests of justice as they affect all parties."

[42] In this case, the factual record is sufficiently complete to determine that the argument advanced has no merit. Therefore, we are prepared to consider it.

[43] In *Williams*, the insured was not aware at the time of the motor vehicle accident that his driver's licence had just been suspended. The insurer denied liability as driving without a licence was a breach of the insurer's policy. The insured applied for relief from forfeiture under s. 129. The trial judge granted that relief, and the Court of Appeal reversed that decision, finding as follows:

> [31] Section 129 does not give judges a broad discretion to "grant relief from forfeiture" generally where the conditions of an insurance policy are breached. To do so would grant the court the power to alter the terms of a policy or conditions of coverage; this power was never envisioned by s. 129.
>
> [32] It is clear from *Falk*, as Madam Justice McLachlin stated that "it is only in respect of such statutory conditions as to proof of loss or other matters or things that are required to be done or omitted with respect to the loss that the court has this power." (emphasis added).
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> [33] The court's power under s. 129 is only in relation to things or matters required to be done, in relation to the loss, that is, after a loss has occurred. The discretion a court has under s. 129 is a narrow one pertaining only to those policy conditions – statutory or contractual – that relate to proof of loss. It does not apply to all policy conditions. (emphasis added).
>
> [34] Where there is an issue in relation to coverage or other policy conditions (i.e. conditions other than those that relate to proof of loss), that issue remains to be determined in the usual way in relation to the interpretation of insurance policies.

[44] The Insureds in this case did not breach a policy condition in the way that Mr. Williams did. They did nothing before the loss to jeopardize their coverage for the benefits at issue. The actions giving rise to the denial of coverage in this case are actions that occurred after the loss occurred and involved negotiating the technical requirements relating to making a claim for a loss where the insured has two insurance policies — one with enhanced benefits and one without. This is precisely the kind of situation s. 129 is meant to cover.

Does the LAT have jurisdiction to apply s. 129?

[45] Both parties accept that the LAT has exclusive jurisdiction to resolve disputes in relation to an insured's entitlement to statutory accident benefits. This is clear from s. 280(1) and (3) of the *Insurance Act*. Thus, if s. 129 is to be applied in this case it is the LAT that must apply it.

[46] The LAT's jurisdiction is set out in s. 5.1(4) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G. (the "*LAT Act"*) which states:

> ***Jurisdiction***
> (4) The Tribunal has jurisdiction to determine all questions of fact or law that arise in the matters before it.

[47] Sections 3(1) and (2) of the *LAT Act* describe the LAT's powers and duties as follows:

> ***Duties and Powers***
>
> 3(1) The Tribunal shall hold hearings and perform the other duties that are assigned to it by or under any Act or regulation.
>
> ***Powers***
>
> (2) Except as limited by this Act, the Tribunal has all the powers that are necessary or expedient for carrying out its duties.

[48] Thus, the LAT has very broad jurisdiction and very broad powers to deal with any questions of law or fact that come before it.

Heartland's Position on the LAT's jurisdiction to apply s. 129.

[49] Heartland argues that the Reconsideration Decision was correct in finding that the LAT has no jurisdiction to apply s. 129 for a number of reasons:

(a) While the *SABS* are consumer protection legislation, that does not change the limits on its authority to grant relief. The LAT is a creature of statute, and, as such, is limited to the jurisdiction expressly granted to it by its enabling legislation. Its enabling legislation does not grant it the jurisdiction to order equitable remedies. Relief from forfeiture is an equitable remedy. Equitable remedies can only be granted by superior courts having inherent jurisdiction.

(b) The intended effect of s. 96 of the *Constitution Act, 1867* would be destroyed if a province could pass legislation conferring on the tribunal the jurisdiction of the superior courts.

(c) The LAT has repeatedly accepted that the use of the word "court" in s. 129 does not include the LAT. This interpretation of the word "court" in s. 129 is correct and consistent with the use of the word "court" in s. 280(3) of the *Insurance Act.*

The LAT has jurisdiction to apply sections of the *Insurance Act* that are not part of the *SABS* and that codify equitable remedies.

[50] In *Akinyimide v. Economical Mutual Insurance Company*, 2023 ONSC 5272, the Divisional Court dealt with whether the LAT had jurisdiction to apply s. 131 of the *Insurance Act*, which codifies the equitable doctrines of waiver and estoppel. The LAT had found that it could not apply s. 131 as the *SABS* are a complete code for resolving disputes between insureds and insurers, s. 131 is not part of the *SABS* and the LAT lacks the

jurisdiction to award equitable remedies. The Divisional Court disagreed, finding that s. 280 of the *Insurance Act* did not oust the LAT's jurisdiction to apply other sections of the *Insurance Act* such as s. 131. It also found that while the LAT had no inherent jurisdiction to award equitable relief, it could do so if that jurisdiction was granted to it by statute. Section 131 granted the LAT the jurisdiction to apply the equitable doctrines of estoppel and waiver.

[51] *Akinyimide* is a complete answer to the suggestion that s. 129 cannot be applied by the LAT because it does not appear in the *SABS* and because it codifies an equitable remedy. Section 129, like s. 131, appears in Part III of the *Insurance Act*, and s. 122 of the *Insurance Act* provides that Part III applies to every contract of insurance in Ontario, subject to three exceptions, none of which are automobile insurance policies under Part VI. If the legislature had intended to exempt policies under Part VI from the application of Part III, it would have said so explicitly.

Allowing the LAT to apply s. 129 does not violate s. 96 of the *Constitution Act, 1867*

[52] *Akinyimide* does not deal with the argument that Heartland advanced before us, namely that to allow an administrative tribunal to grant what is essentially equitable relief like relief from forfeiture would destroy the intended effect of s. 96 of the *Constitution Act, 1867*. According to Heartland, under s. 96 of the *Constitution Act, 1867*, the Governor General has the sole power to appoint judges of the Superior, District and County Courts in each province. That power would be destroyed if a province could pass legislation creating a tribunal and then confer on those tribunal members the jurisdiction to grant equitable remedies, which is a s. 96 judicial power.

[53] This is another argument that was not raised before the LAT.

[54] The main case cited by Heartland to support its position on this issue is *Re Residential Tenancies Act, 1979*, [1981] 1 S.C.R. 714, where the Supreme Court was asked to determine the constitutional validity of a section conferring on the Residential Tenancy Commission the power to evict tenants and requiring landlords and tenants to comply with obligations under the *Act*. The Court applied a three-part test which was focused on the remedial power conferred on the Commission to make eviction orders and order compliance:

1. Does the power conferred "broadly conform" to a power or jurisdiction exercised by a superior, district or county court at the time of Confederation?

2. If so, is it a judicial power?

3. If so, is the power either subsidiary or ancillary to a predominantly administrative function or necessarily incidental to that function?

[55] At the first stage of the inquiry, the Supreme Court held that both powers at issue were analogous to the traditional powers of superior court judges both before and after confederation. At the second step, the Court determined that in substance the tribunal was

exercising those powers in roughly the same way as they are exercised by the courts. With respect to the third step, the Court found that the primary purpose of the legislation at issue was to transfer jurisdiction over a large and important body of law whose primary role was not to administer policy or carry out an administrative function but to adjudicate. Therefore, it was not within the legislative competence of the provinces to empower a residential tenancy commission to make orders of eviction or compliance.

[56] However, there has been an important development in the Supreme Court's jurisprudence since *Re Residential Tenancies Act.* At the first stage of the test, instead of focusing on the remedies granted to the provincial body at issue, the court now focuses on the type of dispute or its subject matter. In other words, instead of asking whether the remedy was within the exclusive jurisdiction of the superior court at confederation, the question is whether the subject matter of the dispute was within the exclusive jurisdiction of the superior court at confederation.

[57] This reframing first arose in *Sobeys Stores Ltd. v. Yeomans and Labour Standards Tribunal (N.S.),* [1989] 1 S.C.R. 238, which involved a s. 96 challenge to a provincial legislative scheme that granted the Director of Labour Standards for Nova Scotia the power to order reinstatement of an employee who had been dismissed without just cause. The issue was initially characterized as whether the province had jurisdiction to empower a provincial tribunal to grant the equitable remedy of specific performance of employment contracts. Writing for the majority, Wilson J. eschewed this approach as a "technical analysis of remedies" and found that it is "the type of dispute that must guide us and not the particular remedy sought." Thus, the power at issue in that case went from the "jurisdiction to order reinstatement" to the "jurisdiction over unjust dismissal".

[58] As Professors Hogg and Wright point out, this is important because for a tribunal's power to be held to be a s. 96 power at confederation, it is clear that the impugned power must have been within the exclusive jurisdiction of s. 96 courts at confederation. Thus, if the power or function is characterized more broadly, it is less likely to run afoul of s. 96 as both inferior and superior courts are more likely to have shared concurrent jurisdiction at confederation. In other words, while a tribunal's remedial powers may have been within the exclusive jurisdiction of the s. 96 courts at confederation, its subject-matter jurisdiction was not: see Peter W. Hogg & Wade Wright, *Constitutional Law of Canada,* 5th ed. (Toronto: Thomson Reuters Canada, 2020), at § 7:19.

[59] This broadening is partly a response to the concern expressed by Wilson J. in *Sobeys*: "The courts have recognized that s. 96 should not stand in the way of new institutional approaches to social or political problems": at p. 253.

[60] Following *Sobeys,* the Supreme Court similarly held in *Reference re Amendments to the Residential Tenancies Act (N.S.),* [1996] 1 S.C.R. 186:

> [34] Two characterizations of the jurisdiction of the Director and Residential Tenancies Board have been advanced by the parties. The appellant along with the Attorneys General of British Columbia, Manitoba,

> Ontario and Quebec argue that the jurisdiction should be characterized as "jurisdiction over residential tenancies; disputes between residential landlords and tenants". On the other hand, the respondent argues that the jurisdiction should be characterized as determining "residential tenancies disputes, including the power to make orders for compliance, repair, compensation, termination and possession and related matters."
>
> [35] The problem with the characterization advanced by the respondent and the majority of the court below is that it runs afoul of the principles set out in *Sobeys Stores*. It limits the historical inquiry to remedies over which the superior court exercised jurisdiction at Confederation and ignores the purpose and subject matter of the legislation. Consequently, I agree with the appellant that the proper characterization of the unproclaimed provisions is "jurisdiction over residential tenancies; disputes between residential landlords and tenants." This characterization captures the "raison d'être of the legislation. The *Residential Tenancies Act* of Nova Scotia is not meant to be a replica of landlord and tenant law. It sets up a complete and comprehensive code independent of landlord and tenant law which is specifically designed for governing the residential tenancy relationship.

[61] The subject matter of the jurisdiction at issue in this case is "the resolution of disputes in respect of an insured person's entitlement to SABs or in respect of the amount of SABs to which an insured person is entitled": *Stegenza v. Economical Mutual Insurance Company*, 2019 ONCA 615, 147 O.R. (3d) 65, at para. 37. Statutory accident benefits are a provincially created entitlement to solve a social problem that did not exist at the time of confederation. Therefore, they could not have been within the exclusive jurisdiction of the superior court at that time. Thus, granting the LAT the power to order relief from forfeiture would not run afoul of s. 96.

[62] Our view on this question is reinforced by the fact that many provincial statutes provide administrative tribunals with the power to grant remedies that are equivalent to equitable remedies. The *Arbitration Acts* of Alberta, British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan expressly entitle arbitral tribunals to decide a dispute in accordance with law, including equity, and to order specific performance, injunctions and other equitable remedies.

The word "court" in s. 129 does include the LAT

[63] In this case, interpreting s. 129 in a manner that grants the LAT the authority to grant relief from forfeiture would further the public policy objectives underlying the *SABS.* This case is a stark illustration of how not doing so would undermine that objective. However, that does not end the interpretative exercise that lies at the heart of this proceeding. It is still necessary to examine whether the wording of s. 129 supports an interpretation that would grant the LAT this jurisdiction.

[64] As Heartland points out, the LAT has repeatedly held that it does not have the jurisdiction to grant relief under s. 129 both because it does not have the power to grant equitable relief (which we have already dealt with) and because s. 129 refers only to the "court" and not to any administrative tribunal.

[65] Part III of the *Insurance Act*, where s. 129 is contained, does not include a definition for the word "court". Other parts of the *Insurance Act* have specifically defined the term. For example, in Part V – Life Insurance, s. 171(1) defines a "court" as meaning "the Superior Court of Justice or judge thereof". The same definition of "court" is used in Part VII – Accident and Sickness, at s. 290. However, the provisions of Part III do not apply to insurance policies under Parts V and VII.

[66] In *Continental Casualty Company v. Chubb Insurance Company of Canada*, 2022 ONCA 188, the Court of Appeal considered a priority dispute involving an insured who similarly elected for benefits under the wrong policy. Though decided on other grounds, the arbitrator noted that his findings in favour of the insured were supported by the principles of equity which it had power to invoke under s. 129 of the *Insurance Act* and s. 31 of the *Arbitration Act, 1991*. The Court of Appeal reversed the decision, also on other grounds, but noted at para. 108 that "potential unfairness arising from an insured's errors when applying for SABS may, in some cases, be corrected by invoking relief from forfeiture as happened in this case." While the question of who had such jurisdiction was not the focus of the discussion in that case, it is worth noting that the decision was written after *Stegenga*, where the Court of Appeal held that it was the legislature's intention to provide the LAT with complete jurisdiction to resolve entitlement disputes in relation to the SABS. If the word "court" in s. 129 does not include the LAT then, applying the principles in *Stegenga*, the insured would not be able to invoke relief from forfeiture to correct the unfairness that can arise from an insured's errors in applying for SABS.

[67] In *R. v. Conway*, 2010 SCC 22, the Supreme Court of Canada held that the Ontario Review Board was a specialized tribunal with authority to decide questions of law and a "court of competent jurisdiction" within the meaning of s. 24(1) of the *Charter*:

> [79] Over two decades of jurisprudence has confirmed the practical advantages and constitutional basis for allowing Canadians to assert their *Charter* rights in the most accessible forum available, without the need for bifurcated proceedings between superior courts and administrative tribunals (*Douglas College*, at pp. 603-4; *Weber*, at para. 60; *Cooper*, at para. 70; *Martin*, at para. 29). The denial of early access to remedies is a denial of an appropriate and just remedy, as Lamer J. pointed out in *Mills*, at p. 891. And a scheme that favours bifurcating claims is inconsistent with the well-established principle that an administrative tribunal is to decide all matters, including constitutional questions, whose essential factual character falls within the tribunal's specialized statutory jurisdiction (*Weber*; *Regina Police Assn.*; *Quebec (Commission des droits de la personne et des droits de la jeunesse)*; *Quebec (Human Rights*

Tribunal); *Vaughan*; *Okwuobi*. See also *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 49.).

…

> [81] Building on the jurisprudence, therefore, when a remedy is sought from an administrative tribunal under s. 24(1), the proper initial inquiry is whether the tribunal can grant *Charter* remedies generally. To make this determination, the first question is whether the administrative tribunal has jurisdiction, explicit or implied, to decide questions of law. If it does, and unless it is clearly demonstrated that the legislature intended to exclude the *Charter* from the tribunal's jurisdiction, the tribunal is a court of competent jurisdiction and can consider and apply the *Charter* — and *Charter* remedies — when resolving the matters properly before it.

[68] Thus, in *Conway*, because the tribunal at issue was found to have the jurisdiction to decide all questions of law, it was a "court of competent jurisdiction" under s. 24(1) of the *Charter*. As already noted, the legislature has specifically granted the LAT the jurisdiction "to determine all questions of fact or law that arise in the matters before it."

[69] The majority in *Conway* considered *Mooring v. Canada (National Parole Board)*, [1996] 1. S.C.R. 75, where it previously declined to hold that the National Parole Board was a court of competent jurisdiction for the purposes of the *Charter*. Notably, in his dissenting reasons at para. 66, Major J. provided the following definition of "court":

> [66] The English word "court" is also capable of a broad interpretation even on a plain and literal reading of that word. For instance, the *Chambers English Dictionary* (7th ed. 1988) defines a "court" as "any body of persons assembled to decide causes" and the *Concise Oxford Dictionary* (8th ed. 1990) defines it as an "assembly of judges or other persons acting as a tribunal". Thus a "court" in its ordinary sense is broad enough to encompass a tribunal. It is notable that the *Charter* does not limit the word court by some phrase such as "court of law", "court of justice" or "superior court". Rather, the *Charter* uses the broad and expansive term "court of competent jurisdiction". As Chrumka J. noted in the *United Nurses of Alberta* case at p. 167, "[t]he phrase `court of competent jurisdiction' is not unknown to the law and is to be given a broad construction". As early as 1907, Collins M.R. in *Garrett* rejected a narrow approach to the phrase "court of competent jurisdiction" and held at p. 886:
>
> … the expression "Court of competent jurisdiction" seems to me to be only a compendious expression covering every possible Court which by enactment is made competent to entertain a claim . . .

[70] While s. 129 of the *Insurance Act* does not use the phrase "court of competent jurisdiction", the legislature has expressly declared that the LAT is competent to decide all the factual and legal issues relating to the claims before it and Part III of the *Insurance Act* (unlike other parts of the Act) has not defined the word "court" in a manner that narrows its meaning.

[71] The Supreme Court considered the meaning of the word "court" recently in *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28. At issue was whether administrative monetary penalties imposed by the BC Securities Commission survived bankruptcy under s. 178(1)(a) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, which states that a bankrupt cannot be discharged from "any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail". Writing for the majority, Côté J. relied on *Black's Law Dictionary* to hold that penalties imposed by an administrative tribunal are not "imposed by a court":

> [46] However, the word "court" in s. 178(1)(a) does not capture administrative tribunals or regulatory bodies. The term "court" implies that a dispute will be adjudicated by a judge or judges (*Black's Law Dictionary* (11th ed. 2019), at p. 444). By comparison, an "administrative tribunal" is "[a] court-like decision-making authority that resolves disputes [or] an administrative agency exercising a quasi-judicial function" (p. 1814). A "regulatory agency" can be defined as "[a]n official body, esp. within the government, with the authority to implement and administer particular legislation" (pp. 77-78 and 1538). "Court" refers to the judiciary, whereas administrative bodies are hybrid entities "falling between the judiciary and government departments created to perform as separate bodies functions transferred from both" (L. Sossin, *Practice and Procedure Before Administrative Tribunals* (loose-leaf), at § 2:1).

[72] *Poonian* does not reference *R. v. Conway*, which does establish that the word court can include an administrative tribunal. However, in our view, key to understanding the Supreme Court's more narrow interpretation of the word "court" in *Poonian* is its acceptance of previous Supreme Court jurisprudence that "[t]he exceptions in s. 178(1)(a) through (h) must be interpreted narrowly and applied only in clear cases": *Poonian*, at para. 26 (citations omitted).

[73] In this case, as in *R. v. Conway*, reading the term "court" narrowly will lead to the "denial of an appropriate and just remedy": see *R. v. Conway*, at para. 79. *Tomec* tells us that the *SABS* is consumer protection legislation that is to be interpreted broadly in order to achieve its purpose, which is to reduce the hardship faced by the victims of motor vehicle accidents. The Insureds were very seriously injured in the accident. They did their best to notify their insurers and to make the claims in the way that would produce the most benefits. It is because of the difficulty that insureds can face in understanding which insurer to apply to if they have two policies, one with enhanced benefits and one without, that OPCF 47 was

put in place. The Insureds sought help from the applicable insurance companies with processing their claims. One company gave them the wrong information; the other gave them no assistance whatsoever. There is no suggestion that the Insureds wish to be doubly compensated. Section 129 existed to provide relief in precisely this kind of situation before the LAT was given exclusive jurisdiction over the SABS. There is nothing in the *Insurance Act* that suggests that the legislature, when they gave the LAT exclusive jurisdiction over the SABS, wished to increase the hardships faced by the victims of motor vehicle accidents by denying them the right to seek relief from forfeiture if they made an innocent mistake in processing their claims.

[74] While not advanced in its factum, Heartland argued in its oral submissions that the presumption of consistent expression precludes an interpretation of "court" in s. 129 that includes the LAT. The word "court" is not defined in Part VI - Automobile Insurance of the *Insurance Act.* However, the word is used in s. 280(3) of that Part, which reads:

> No person may bring a proceeding in any court with respect to a dispute described in subsection (1) [disputes in respect of an insured person's entitlement to statutory accident benefits or in respect to the amount of statutory benefits to which an insured person is entitled], other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review.

[75] Heartland submits, and we agree, that the word "court" in s. 280(3) does not include the LAT. It then argues that the presumption of consistent expression, where a word or phrase is presumed to bear the same meaning throughout a text, would dictate that the word "court" in s. 129 must also be interpreted in the same way. We disagree.

[76] While the presumption of consistent expression is a well-established principle of interpretation, Ruth Sullivan identifies three general problems with it and explains why it is sometimes given little weight:

> One problem with the presumption of consistent expression is that it does not necessarily reflect the realities of legislative drafting. Much legislation is lengthy and complicated and subject to frequent amendments. […] In addition, amendments that are proposed by legislative committees during the legislative process are often drafted with little regard for their relation to the Act as a whole or the statute book. Some statutes, like Insurance Acts or the *Criminal Code*, are frequently amended year after year. It is not surprising, then, that inadvertent variations occur within a single Act.[1] This

[1] Ruth Sullivan, *The Construction of Statutes*, 7th ed., (LexisNexis Canada Inc., 2022) ("Sullivan, Construction of Statutes"), at §8.04[5], citing *I.R.C. v. Hinchy*, [1960] A.C. 748 at 766 (H.L.); *Tran v. Canada (Public Safety and Emergency Preparedness)*, [2017] S.C.J. No. 50, 2017 SCC 50 at para. 29; *R. v. Steele*, [2014] S.C.J. No. 61, [2014] 3 S.C.R. 138 at para. 65; *Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers, Local 579 v. Construction General Labourers, Rock and Tunnel Workers, Local 1208*, [2003] N.J. No. 127, 2003 NLCA 24 at paras. 8-9 (N.L.C.A.).

problem has become more acute since the practice of general statute revision has been replaced by continuous electronic consolidation in most Canadian jurisdictions.

A second problem with the presumption, as pointed out by Côté, is that it conflicts to some extent with the contextual principle in interpretation, which emphasizes that meaning is dependent on context. Identical words may not have identical meanings once they are placed in different contexts and used for different purposes.[2] This is particularly true of general or abstract words. These factors tend to weaken the force of the presumption so that in a given context the courts may assign it little weight.[3]

Finally, like all the presumptions of interpretation, the presumption of consistent expression must be weighed against relevant competing considerations. A good example is found in the dissenting judgment of Dickson C.J. in *Mitchell v. Peguis Indian Band*. One of the issues in the case was whether the expression "Her Majesty" in s. 90(1)(b) of the *Indian Act* referred solely to the federal Crown or included provincial Crowns as well. Dickson C.J. conceded that in s. 90(1)(a) the words "Her Majesty" were clearly limited to the Crown in right of Canada and that this usage was found in many places in the Act. He also conceded that elsewhere in the Act other expressions were used when referring to the Crown in right of the provinces. All this amounted to a strong case for applying the presumption of consistent expression. Yet Dickson C.J. refused to be bound. In his view, the arguments based on the meaning of "Her Majesty" elsewhere in the text were not conclusive. He preferred to give more weight to the presumption in favour of Indigenous peoples than to the presumption of consistent expression. The latter is merely a drafting convention, whereas the former embodies an important constitutional policy.[4] [Emphasis added.]

[77] For similar analysis and conclusion, see Côté, Beaulac, and Devinat who note that this presumption is of "low persuasive weight" because it "contradicts the linguistic principle that expressions do not have a precise meaning when taken alone, but acquire meaning only when read in context. Or: the same term in a different context bears a different

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[2] Sullivan, *Construction of Statutes*, at §8.04[5], citing *R. v. Middleton*, [2009] S.C.J. No. 21, 2009 SCC 21 at paras. 14-16 (S.C.C.); *Jevco Insurance Co. v. Pilot Insurance Co.*, [2000] O.J. No. 2259, 49 O.R. (3d) 760 at 763 (Ont. S.C.J.); *Bapoo v. Co-operators General Insurance Co.*, [1997] O.J. No. 5055, 36 O.R. (3d) 616 at para. 28 (Ont. C.A.); *Coca Cola Ltd. v. Deputy Minister of National Revenue Customs and Excise*, [1983] A.C.F. no 143, [1984] 1 F.C. 447 at 454-456 (F.C.A.).

[3] Sullivan, *Construction of Statutes*, at §8.04[5], citing *Marche v. Halifax Insurance Co*., [2005] S.C.J. No. 7, [2005] 1 S.C.R. 47 at para. 18 (S.C.C.); *R. v. Sommers*, [1959] S.C.J. No. 49, [1959] S.C.R. 678 at 685 (S.C.C.).

[4] *Mitchell v. Peguis Indian Band*, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 at 107 (S.C.C.). For other examples where a word was given different meanings in the same section, see *Canadian Pacific Railway Co. v. Lac Pelletier (Rural Municipality)*, [1944] S.J. No. 66, [1944] 3 W.W.R. 637 (Sask. C.A.), and *Board v. Board*, [1919] A.C. 956 (P.C.).

meaning". Given these reservations regarding the presumption of uniformity of expression, "it should come as no surprise that the courts often attribute different meanings to the same term. …": see P.A. Côté, Stéphane Beaulac & Mathieu Devinat, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2010), at 355-356.

[78] In *Bapoo v. Co-operators General Insurance*, 1997 CanLII 6320 (ON CA) the Court of Appeal considered s. 12(4) of the *SABS*, which permits insurers, when calculating the gross weekly income of an insured, to deduct "payments for loss of income … received by or available to the insured person … under any income continuation plan." The key issue was whether the term "received by or available to" referred to gross or net disability payments.

[79] The insurer noted that s. 15 of the *SABS*, which contained a similar phrase ("if received or available") was commonly interpreted to permit gross deductions. It argued that if these words permitted gross deductions under s. 15, they must do the same under s. 12(4). For the majority, Justice Laskin disagreed:

> Giving the same words the same meaning throughout a statute is a recognized principle of statutory interpretation: see R. v. Frank, 1977 CanLII 152 (SCC), [1978] 1 S.C.R. 95 at p. 101, 75 D.L.R. (3d) 481. The court ordinarily presumes that legislation is internally consistent and coherent, and that the legislature does not enact inconsistent provisions.
>
> …
>
> However, the principle of textual consistency is not an inflexible rule or an infallible guide to interpretation. As with the interpretation of any statutory provision, the meaning of the words "received or available" in s. 15 can only be established by considering their context. The purpose of s. 15 is to ensure that injured persons who return to work after their accident do not end up receiving more than they earned before the accident. Under s. 12, the weekly income benefit is calculated by taking 80 per cent of a person's gross weekly income before the accident. Therefore, under s. 15, it makes sense that the insurer be entitled to deduct 80 per cent of the gross income earned after the accident. Because their contexts differ, the words "received or available" should be interpreted differently in ss. 12(4) and 15.

[80] Laskin J.A. went on to cite the following excerpt from *Maunsell v. Olins* [1975] A.C. 373, at p. 382, [1975] 1 All E.R. 16 (H.L.):

> They [the rules of statutory interpretation] are not rules in the ordinary sense of having some binding force. They are our servants, not our masters. They are aids to construction, presumptions or pointers. Not infrequently one "rule" points in one direction, another in a different direction. In each case we must look at all relevant

> circumstances and decide as a matter of judgment what weight to attach to any particular "rule".\

[81] In this case, to echo the words of Chief Justice Dickson in *Mitchell v. Peguis Indian Band*, supra, we prefer to give weight to the presumption in favour of fostering a primary goal of the *SABS* [relieving hardship to the victims of motor vehicle accidents] than to the presumption of consistent expression. In dong so we take note of the fact that, as Sullivan remarks, the *Insurance Act* is a statute that has undergone a number of amendments over the years. Therefore, it is not surprising that the there are variations of meaning within its text.

[82] We find that the Vice-Chair erred in the Reconsideration Decision when he found that the word “court” in s. 129 did not include the LAT.

Conclusion

[83] For these reasons, the appeal is allowed, the Reconsideration Decision is set aside, and the Decision of Arbitrator Norris dated August 2, 2023 is restored. In accordance with the agreement of the parties, the Insureds are entitled to their costs of this appeal, fixed in the amount of $6,000.00 plus H.S.T.

_____
H. Sachs J.

I agree _____
Backhouse J.

I agree _____
S.T. Bale J.

Released: July 29, 2025

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Sachs, Backhouse and S.T. Bale JJ.

BETWEEN:

Andrew Botbyl and Tracey Yaromich

Insureds

– and –

Heartland Farm Mutual Inc.

Respondent

REASONS FOR JUDGMENT

Released: July 29, 2025