CITATION: Wilson v. Intact Insurance Company, 2025 ONSC 5305
DIVISIONAL COURT FILE NO.: 737/24 and 738/24
DATE: 20250918

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWATT ACJ, MOLLOY and SACHS, JJ.

BETWEEN:	
NADINE WILSON Applicant/Appellant	*S. Pickering and M. Elkin*, for the Applicant/Appellant
– and –	
INTACT INSURANCE COMPANY and THE LICENCE APPEAL TRIBUNAL Respondents	*D. March*, for Intact Insurance Company *G. Köleogēlu*, for the Licence Appeal Tribunal
	HEARD: August 20, 2025 in Toronto

MOLLOY J.:

REASONS FOR DECISION

A. INTRODUCTION

[1] Nadine Wilson was injured in a motor vehicle accident on August 17, 2016. She sought catastrophic impairment benefits from her insurer, Intact Insurance, and was denied. She then applied to the Licence Appeal Tribunal ("LAT") for catastrophic impairment benefits. On November 1, 2024, after an 11-day hearing and closing submissions, Adjudicator Harry Adamidis issued a 21-page written decision finding Ms. Wilson was not catastrophically impaired as a result

of the accident and dismissing her claim in its entirety.[1] Ms. Wilson's reconsideration application was also dismissed by the same adjudicator for reasons dated March 28, 2025.[2]

[2] Ms. Wilson sought catastrophic impairment benefits from Intact Insurance under *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10. Her application was based on alleged impairments under Criteria 6, 7, and 8 of the *American Medical Association's Guides to the Evaluation of Permanent Impairment* ("*AMA Guides*"). Criterion 6 is met if the applicant's physical impairments result in 55% or more whole person impairment ("WPI"). Criterion 7 is based on mental and behavioural impairments which, when combined with the Criterion 6 rating, results in 55% or more WPI. Under Criterion 8, applicants are rated under specified functions of daily living and are considered to have catastrophic impairments if their useful functioning is precluded by "marked impairments" in at least three areas of function or an "extreme impairment" in at least one area of function. Based on the expert evidence presented by Ms. Wilson at the hearing, she would have satisfied Criterion 6 (65%), Criterion 7 (78%), and Criterion 8 (marked impairment in three categories).

[3] The Adjudicator dismissed her claim under all three criteria, assessing her at 36% under Criterion 6, 48% under Criterion 7, and with only one marked impairment under Criterion 8 (adaptation in a work setting). The dismissal of her application and the finding that she had not suffered a catastrophic impairment also meant that she would not be entitled to attendant care, housekeeping assistance, and several specialized treatment plans. The Adjudicator made no findings with respect to entitlement to those benefits if she had been found to be catastrophically impaired.

[4] The applicant/appellant (referred to as the applicant below) seeks relief under a statutory right of appeal limited to errors of law and judicial review for other issues. She alleges errors of law, breaches of the principles of procedural fairness, and unreasonable findings by the Adjudicator. The applicant asks this court to make a finding that she is catastrophically impaired and remit the matter to the tribunal to determine the issue of the nature and extent of the benefits to which she is entitled.

[5] I do not find breaches of procedural fairness that would warrant setting aside the decision. However, there are aspects of the decisions that are unreasonable and which are of sufficient impact that the decisions as a whole cannot stand. There are some issues with respect to benefits that would be intertwined with findings of fact on the level of impairment. There are also some intersections between levels of impairment between the different criteria, which make it inappropriate for this court to make a finding of catastrophic impairment. This should be done at

[1] *Wilson v. Intact Insurance*, 2024 Can LII 108235 (ON LAT) per Adjudicator, H. Adamidis
[2] *Wilson v. Intact Insurance*, 2025 Can LII 28445 (ON LAT) per Adjudicator, H. Adamidis

the tribunal level. The decision is therefore quashed and the application is remitted to the LAT for a new hearing before a different Arbitrator.

B. STANDARD OF REVIEW

[6] There is no dispute between the parties as to the standard of review. The standard of review for an appeal of questions of law subject to the statutory appeal is correctness and the standard of review on questions of fact or mixed fact and law subject to judicial review is reasonableness.[3]

[7] Although there are sometimes references to a standard of review of correctness on issues of procedural fairness, this is not technically accurate. Parties before administrative tribunals such as the LAT are entitled to procedural fairness. No specific standard of review applies. The reviewing court merely determines whether or not there has been a breach of procedural fairness, following the principles established in 1999 by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, and many cases applying those principles since then.[4]

C. POSITIONS OF THE PARTIES

[8] There is no question that Ms. Wilson was seriously injured in the automobile accident with long-term consequences. She submitted substantial medical and other expert evidence supporting her claims for the relief she sought. The issue is the extent of those injuries and the degree to which she remains impaired by them. Intact Insurance submitted substantial expert evidence that, while recognizing Ms. Wilson's impairments, did not agree with the applicant's evidence as to the extent of those disabilities.

[9] The applicant submits that the Adjudicator erred in law, breached procedural fairness, provided insufficient reasons for his decisions, and made unreasonable factual findings in a number of areas.

[10] In response, the insurer emphasizes the specialized nature of the tribunal and the deference owed to the Adjudicator's decision. The respondent argues that there were no errors of law and there was no denial of procedural fairness. Rather, the applicant is merely trying to reargue factual issues that were carefully considered by the Adjudicator and decided in a manner not favourable to her position, but which were nevertheless reasonable.

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[3] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37; *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, 489 D.L.R. (4th) 191.

[4] See e.g. *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650; *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504; *Afolabi v. Law Society of Ontario*, 2025 ONCA 257, at para. 60.

[11] The LAT takes no position on the merits of the appeal. However, the LAT submits that sufficiency of reasons should not be a stand-alone basis for reversing the decision of the Adjudicator.

D. ANALYSIS

1. Overview

[12] I see no merit in the procedural fairness issues raised by the applicant. There was a lengthy hearing before the Adjudicator. Ms. Wilson was represented by counsel throughout. She knew the evidence being relied upon by the insurer and had a full opportunity to respond to it. She had also had a full opportunity to be heard and a right to request reconsideration. Following the hearing, the Adjudicator provided detailed reasons for rejecting the applicant's claim. Those reasons are sufficient to tell the applicant why she was unsuccessful and to enable proper appellate review. The Adjudicator is not required to refer in his reasons to every single piece of evidence that was before him. To the extent there were omissions in the reasons or evidence that might have been missed, the reconsideration process was able to address those issues. Likewise, where the original reasons raised points of procedural fairness, those issues were raised in reconsideration, which gave the applicant the opportunity to make submissions. On reconsideration, the Adjudicator also provided adequate reasons, although understandably not as detailed as the original reasons after the hearing. Although there are areas where I consider the Adjudicator's decision to be unreasonable (as referred to below), I was able to discern the basis for his decision from the reasons. In my view, with one exception (the double vision issue referred to below) the reasons meet the required sufficiency standard, nor would I interfere with the decisions of the tribunal on the grounds of procedural fairness.[5]

[13] In both her factum and oral submissions, the applicant provided a detailed critique of alleged errors and unreasonable conclusions by the Adjudicator. Some of the points raised by the applicant amounted to matters of little significance. Others clearly fell into the category of asking this court to make its own determinations of fact in contradiction to what the Adjudicator had found. I do not propose to review every single fault found with the reasons, but rather to focus on five key areas in which the applicant made a compelling argument for setting aside the decision. They are:

(i) Double Vision (Criterion 6)

(ii) Peripheral Neuropathy in Upper Extremities (Criterion 6)

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[5] see *Baker*; *Afolabi*.

(iii) Medications (Criterion 6)

(iv) Equilibrium (Criterion 6)

(v) Criterion 8

[14] In my view, the Adjudicator's decision was unreasonable in the first three of the areas listed above. Although I am not persuaded that the problems in the other two categories are sufficient to render the decision "unreasonable," I do have concerns and consider it appropriate to explain why they do not, in my view, reach the unreasonableness threshold.

[15] Each of these five areas were dealt with in the Adjudicator's original decision. Each was also a subject of the applicant's reconsideration request and were considered by the Adjudicator in his subsequent reconsideration decision. This court is tasked with reviewing these decisions and determining whether their content adequately justifies the Adjudicator's conclusions.[6]

[16] In this context it is useful to consider Rule 18.2 of the *Licence Appeal Tribunal Rules* ("*LAT Rules*"), which sets out the criteria that must be met before a decision can be set aside on reconsideration. They are: (a) the Tribunal acted outside its jurisdiction or committed a material breach of procedural fairness; (b) the Tribunal made an error of law or fact that would likely have changed the result; or (c) new evidence not previously available that would likely have affected the result. If any of the criteria are met, the Tribunal can confirm, vary, or cancel the decision or order, or order a rehearing on all or part of the matter.[7]

2. Criterion 6

Factual Findings

[17] Visual impairments are rated under Criterion 6 in accordance with the *AMA Guides*. At the hearing, Ms. Wilson sought a determination that she was catastrophically impaired under this criterion. A catastrophic impairment designation under this criterion would require a finding that the impairments resulted in 55% or more whole person impairment ("WPI"). The applicant's submissions at the tribunal stage included assessments under Criterion 6 that totaled 65%, of which 24 % was based on a finding that Ms. Wilson had intermittent diplopia (double vision), 5% was based on photophobia, 11% was based on peripheral neuropathy in the upper extremities, 2% on medication, and 1% each for tinnitus and equilibrium.[8]

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[6] *Vavilov*, at paras. 84-86.
[7] *LAT Rules*, r. 18.4
[8] It is worth noting that under the *AMA Guides*, the percentages at times combine in ways that are not straightforward and simply adding percentages together is not correct.

[18] The Adjudicator determined that the rating under Criterion 6 was 36%, which fell below the 55% requirement to qualify as catastrophic. In coming to that conclusion, he awarded nothing for visual impairments, medication, or peripheral neuropathy.

Double Vision

[19] The Adjudicator found that Ms. Wilson did not have diplopia. Ms. Wilson's expert optometrist witness, Dr. Quaid, testified that Ms. Wilson had double vision, but that it was intermittent. He asked her to describe the frequency and she said she did not always have it, but that it was closer to constant than never. Dr. Quaid testified that, on testing, he was able to observe marked instability in the fixation of Ms. Wilson's left eye, consistent with diplopia within the centre of her range of vision. In objective testing to assess convergence, a score at the 15th percentile means that the person's vision is impaired. Ms. Wilson's score on this test was between the 1st and 3rd percentile. Dr. Quaid further testified that the *AMA Guides* do not distinguish between intermittent and constant when providing an evaluation for diplopia. Rather, if it is in the centre line of vision (which was the case for Ms. Wilson), it is the equivalent of 24%. The *AMA Guides* state:

> Diplopia within the central 20˚ is estimated to be a 100% impairment of ocular motility … This is equivalent to the loss of vision of one eye, which is estimated to be …a 24% whole person impairment.[9]

Dr. Quaid therefore assigned 24% impairment due to double vision.

[20] Intact's expert witness, Dr. Breslin, awarded nothing for double vision because he did not objectively observe it in any of his testing. He acknowledged in his testimony that he had not seen Dr. Quaid's report or the test results supporting that report and was not, therefore, in a position to comment on it.

[21] The Adjudicator accepted the evidence of Dr. Breslin and assigned a score of 0 for double vision. In his initial decision, the Adjudicator gave two reasons for this conclusion. First, he took issue with Dr. Quaid's failure to plot the diplopia along eight meridians in the visual field and to then assign a percentage of loss of ocular motility. He held that because Dr. Quaid did not do that, his report was critically flawed. The Adjudicator also disagreed with Dr. Quaid arriving at 24% for line-of-sight diplopia without regard to the frequency of the episodes of double vision, pointing out that this would lead to an absurd result. He gave as an example a person who is free of diplopia 99% of the time and has virtually no impairment, but who would get the same impairment rating as someone who had lost an eye. Second, the Adjudicator held that he did not accept that Ms. Wilson had double vision at all. He was critical of Dr. Quaid's finding as being based on the

[9] *AMA Guides*, p. 8/217

applicant's reported symptoms and noted that the abnormalities shown in the physical tests done by Dr. Quaid in 2022 were not present when she was tested by Dr. Breslin one year later.

[22] On reconsideration, the Adjudicator essentially found the same things: (1) that Dr. Quaid's rating was flawed because he did not properly follow the *AMA Guides* and (2) the subsequent testing done by Dr. Breslin did not detect the left eye problem noted by Dr. Quaid and there was therefore no ongoing double vision eye impairment. The Adjudicator characterized the applicant's grounds for reconsideration as being merely an argument about the weight he gave to particular evidence as opposed to an error.

[23] I agree with the submissions of counsel for the applicant that the Adjudicator's reasons on this issue do not stand up to the level of scrutiny required to meet the reasonableness standard. It is always open to an Adjudicator to prefer the evidence of one expert over another. However, a central issue here was objective testing. Dr. Quaid performed objective testing and found anomalies consistent with the applicant's reporting of intermittent double vision. He even observed her in his office tilting in an odd direction when walking and videotaped her movements. The Adjudicator failed to explain any basis for preferring the opinion of one expert over the other merely because the one expert did not observe a problem that was described by the other as being intermittent. The Adjudicator's conclusion that the double vision problem was no longer ongoing failed to take into account the applicant's own evidence at the hearing that she continued to experience this problem. Thus, his finding that there was no double vision carries with it a finding that he did not believe the applicant's testimony on this issue. However, he made no findings of credibility whatsoever. He also did not take into account the numerous other experts who recorded Ms. Wilson complaining of having double vision.

[24] Further, the Adjudicator made no mention of the report of Dr. Nguyen, which was filed at the hearing. She assessed Ms. Wilson through a battery of tests administered on two occasions in April and May 2023 and provided a report dated May 31, 2023, which was around the same time as Dr. Breslin did his assessment. Dr. Nguyen found substantial objective evidence of visual impairment consistent with double vision. On most of the functional tests, Ms. Wilson's score was described as "poor" or "very poor" and Dr. Nguyen concluded she had "severe physical dysfunction skills" and that the "functional difficulties found are significant departures from the norm."[10] Those findings are consistent with those of Dr. Quaid. This does not mean that Dr. Breslin was wrong. He clearly stated that his opinion was based on what he was able to test at the time of his assessment.

[25] While it is not necessary for the Adjudicator to refer to every piece of evidence before him in reaching a conclusion, where the bulk of the evidence strongly diverges from the evidence he

[10] Report of Dr. Nguyen, dated May 31, 2023, at p. 2.

accepted, logical reasons should be provided for preferring one over the other.[11] The reasons provided do not logically support the conclusion reached.

[26] The Adjudicator opined that it would be an "absurd result" for someone who had no problem with double vision 99% of the time to be assessed at the same degree of impairment as someone who had lost an eye. In my view, it is equally "absurd" to assess someone who has double vision "fairly often" (rated as 3 on a scale of 0-4) as having no degree of impairment at all. Dr. Quaid took his guidance directly from the *AMA Guides*. That does not mean that they must be slavishly followed, particularly if there is a gap or where it would lead to an absurd result. I do not propose to get into the correct interpretation of the *AMA Guides* as that is not the function of this Court. However, I will say that I found the submissions of applicant's counsel on this point to be logical and persuasive, particularly with respect to there being no necessity to determine the range when the double vision is directly in the line of sight. That determination is best dealt with on the basis of expert evidence and by a tribunal with specialized expertise in this area.

[27] Also, the Adjudicator's approach to the *AMA Guides* strikes me as unduly rigid. Previous decisions do not endorse such a rigid approach, but rather suggest a liberal interpretation consistent with their remedial purpose.[12] The *AMA Guides* themselves state:

> It should be understood that the *Guides* does not and cannot provide answers about every type and degree of impairment, because of the considerations noted above [about how objective data is not always available] and the infinite variety of human disease, and because the field of medicine and medical practice is characterized by a constant change in understanding disease and its manifestations, diagnosis, and treatment. Further, human functioning in everyday life is a highly dynamic process, one that presents a great challenge to those attempting to evaluate impairment.
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> The physician's judgment and his or her experience, training, skill, and thoroughness in examining the patient and applying the findings to *Guides* criteria will be factors in estimating the degree of the patient's impairment. These attributes compose part of the "art" of medicine, which, together with a foundation in science, constitute the essence of medical practice. The evaluator should understand that other considerations will also apply, such as the sensitivity, specificity, accuracy, reproducibility, and interpretation of laboratory tests and clinical procedures, and variability among observers' interpretations of the tests and procedures.

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[11] See *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, 485 D.L.R. (4th) 583, at para. 65.
[12] See *G v. Pilot Insurance Company*, 2006 ONFSCDRS 44; *Arts v. State Farm Insurance Company* (2008), 91 O.R. (3d) 394 (S.C.) at para 10.

[28] Moreover, the truth-seeking function of a hearing of this nature must be recognized. Where there was any confusion (and clearly there was in this case), it was open to the Adjudicator under Rule 18.4 of the *LAT Rules* to direct a further hearing on that particular issue. In my view, the Adjudicator was unreasonable in reducing a finding of a 24% impairment to 0% based on his own rigid interpretation of the *Guides.* This, particularly when coupled with his apparent disregard of other confirmatory evidence and the testimony of Ms. Wilson, as well as the absence of articulated reasons for doing so, leads me to the conclusion that the 0% assessment by the Adjudicator was unreasonable and cannot stand.

Peripheral Neuropathy

[29] Dr. Mustafa, a neurologist retained by Intact Insurance, assessed Ms. Wilson as having an impairment rating of 6% for peripheral neuropathy in the right upper extremity and an additional 6% for the left upper extremity. These ratings were accepted by the applicant. It is clear from Dr. Mustafa's report that he referred to the *AMA Guides* in reaching those conclusions and also clear that he was referring to the "Muscular and Peripheral Nervous System" in doing so. However, in referring to the applicable charts, he made an error by referencing the incorrect table and pages in the *Guides*. The citation he provided was from a section on emotional and behavioural impairment, which was clearly a mistake.

[30] The Adjudicator pointed out this error in his initial reasons, but instead of seeking clarification, or finding that this was an inconsequential error, he held:

> The impairment does not appear to be related to the table used to rate that impairment. As such, I give no weight to this impairment rating.

[31] Thus, due to a simple typographical or transcription type error with respect to the applicable table in the *AMA Guides,* he awarded 0% for an impairment agreed by the parties to be 11%. That is not a reasonable conclusion.

[32] On the reconsideration request, counsel for the applicant pointed out the obvious error in referring to the table in the *Guides.* The Adjudicator held:

> It is not possible to understand a WPI rating without referencing the correct table used to make that rating. Consequently, I find that I did not fail to appreciate the evidence, and therefore, did not make an error of fact that would have resulted in a different outcome.

[33] This determination by the Adjudicator had nothing to do with whether the applicant did or did not have the degree of impairment that all of the experts and both parties agreed that she had. A claim for catastrophic impairment benefits carries with it significant consequences for the future economic security and quality of life of the applicant. It troubles me that a tribunal of this nature would take such a rigid stance on an issue like this. All the Adjudicator had to do was determine the right chart. Instead, he took the position that since it was the doctor that made the mistake and not him, there was no error to be corrected. That is untenable in light of the evidence before the

Adjudicator and an unreasonable finding that cannot, in the interests of justice, be permitted to stand.[13]

Medications

[34] Where there are impairments that are masked by medications, or where medications have side effects causing impairments, the *AMA Guides* permit an additional impairment rating at between 1 and 3%.

[35] The Adjudicator considered the evidence of Dr. Gallimore, who determined that there should be a rating of 2% for medications. In doing so, Dr. Gallimore noted that the applicant began taking analgesics after, and as a consequence, of the motor vehicle accident. He therefore found that she was impacted, but not at the extreme end of the scale (which would be 3%) and assessed her at 2% under this category.

[36] In his initial decision, the Adjudicator found that Dr. Gallimore's analysis was incomplete because he did not specify whether the medications were masking the impairments resulting from the accident, as opposed to causing further side effects. He therefore found that there was an insufficient basis to rate the applicant under this category and gave an assessment of 0% under this heading.

[37] On reconsideration, the applicant argued that this was an error of law because the Adjudicator failed to take into account the evidence of Dr. Farhadi regarding medications. Dr. Farhadi, who is a neurologist, also assigned 2% for the medications Ms. Wilson was on as a result of the accident. At the hearing, Dr. Farhadi testified that the combination of medications Ms. Wilson was taking since the accident may have "synergistic effects" on her including fatigue, dizziness, sleep/wake disturbances, and "other potential neurologic side effects."[14] This evidence is relevant and determinative and was not taken into account by the Adjudicator.

[38] On reconsideration the Adjudicator refused to change his assessment, relying on the failure of counsel for the applicant to specifically direct him to the evidence of Dr. Farhadi in closing submissions on this point. The Adjudicator reasoned that he, therefore, committed no error himself. He held that the reference to Dr. Farhadi's evidence in the reconsideration request was "new submissions being made for the first time" and stated that "a request for reconsideration is not an opportunity to re-litigate the case with new arguments."

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[13] See *Vavilov*, at paras. 101, 125-126.

[14] Transcript of testimony of Dr. Farhadi from initial proceeding before Adjudicator Adamidis at pp. 38-39, 52.

[39] This is an unreasonable decision in light of the evidence that was before the Adjudicator both in the first instance and on reconsideration. It cannot stand. This is an enormous record covering thousands of pages of material, some of it quite complex. It is understandable that some material can be overlooked, particularly if the Adjudicator was not specifically directed to it. However, Dr. Farhadi also testified on this issue and was cross-examined on it. It was important and determinative evidence and it should not have been disregarded, even in the original decision.

[40] While the original error by the Adjudicator is understandable, the position he took on reconsideration is not. One of the primary purposes of reconsideration is error correction. It is far easier for the Adjudicator to correct errors at this stage rather than forcing the parties into the judicial system to accomplish that purpose, not to mention considerably faster and more cost-effective. A trier of fact has an obligation to consider the whole of the evidence in reaching a conclusion. Here, the Adjudicator has acknowledged not taking into account the relevant and determinative evidence of Dr. Farhadi and seeks to excuse it on the basis that counsel did not specifically refer him to that evidence on this point. Again, he seeks to emphasize that he was not the one who made the mistake, and therefore there is no basis to change his position. This is completely without regard to the underlying purpose of the hearing, which is to make a fair decision based on the whole of the evidence. This should have been a simple issue of correcting an oversight. It is fundamentally unreasonable for the Adjudicator to refuse to change his position because counsel failed to direct him to specific relevant testimony that was on point. The reconsideration process is not about critiquing the thoroughness of the Adjudicator and holding him to account. It is about reaching the right result for the parties. When a mistake is discovered, an answer by the Adjudicator that it was not his fault completely misses the point of the reconsideration. Again, this is a decision that cannot stand.

Equilibrium

[41] Equilibrium is another basis of assessment under Criterion 6. It relates to the applicant's orientation in space, maintained by visual, kinesthetic, and vestibular mechanisms. Disturbances of equilibrium include vertigo, which is produced by disorders of vestibular mechanism, the central nervous system, and eye movements. The *AMA Guides* provide two areas of Classification. Class 1 provides an impairment of 0% where the applicant shows signs of vestibular disequilibrium but there are no supporting objective findings and the usual activities of daily living can be performed without assistance. Class 2 results in an impairment assessment of between 1 and 10%. To fall into this class, the applicant must have signs of disequilibrium that are supported by objective findings and "the usual activities of daily living are performed without assistance, except for complex activities such as bicycle riding or certain types of demanding activities related to the patient's work, such as walking on girders or scaffolding."

[42] Dr. Shinghal, an expert for the applicant, assessed Ms. Wilson's degree of impairment based on problems with equilibrium at 1%. There was considerable objective support for the existence of disequilibrium from testing done by several professionals. Initially, Dr. Shinghal assessed Ms. Wilson at 8% based on that testing and observations of Ms. Wilson. However, when

Dr. Shinghal learned at the hearing that Ms. Wilson was still driving her motorcycle, including on long-haul trips such as to Nova Scotia and North Dakota, she changed her assessment to 1%.

[43] The Adjudicator held that the rating of 1% was not available when the applicant was able to perform the complex task of driving a motorcycle, and rated the applicant at 0%.

[44] Reasonable minds could differ on whether the *Guides* is that rigid. However, this is not a situation in which I would characterize the decision of the Adjudicator as unreasonable to the point that this court should intervene. Given that this involved factual findings and the interpretation of specialized evidence within the Adjudicator's area of expertise, deference is due to his decision. It falls within a spectrum of outcomes that could be considered to be reasonable.

3. Criterion 8

[45] I have come to a similar conclusion with respect to Criterion 8, which assesses the severity of the impact of mental and behavioural impairments in a number of areas: activities of daily living, social functioning, concentration, persistence and pace, and deterioration or decompensation in work or work-like settings. Unlike the other categories based on specific percentages of WPI, the assessments under Criterion 8 require a rating of: none, mild, moderate, marked, and extreme. A rating of marked impairment in at least three categories will support a finding of catastrophic impairment. Expert witnesses for the respondent found that the applicant's impairments in all four categories were mild. Expert witnesses for the applicant rated her as moderate with respect to activities of daily living, and the Adjudicator agreed with that assessment. The witnesses for the applicant rated her as having a marked impairment in the other three categories. The Adjudicator accepted that she had a marked impairment with respect to her adaptation work or work-like settings. However, he found only a moderate impairment in the other two categories – more than what the respondents' experts found, but not to the level of marked impairment. In the result, the Adjudicator found a marked impairment only in two categories and therefore found her not to be catastrophically impaired.

[46] There was evidence going both ways on the two critical categories (social functioning and concentration, persistence and pace). The applicant argues that the Adjudicator failed to take into account the applicant's own baseline in these areas prior to the accident. Again, this is an area where reasonable minds could disagree. It is true that the Adjudicator did not first establish a baseline for activities prior to the accident and then assess the degree of impairment since then. However, that is not a methodology cast in stone. The Adjudicator did not completely ignore the applicant's level of functioning prior to the accident. He made several references to it. However, he focused primarily on things she is still able to do. In doing so, he weighed the evidence of witnesses including the applicant and including the differing opinions of the experts. I am not able to say that his conclusions are unreasonable on the two categories on which he found moderate rather than marked impairment. Other people might weigh the factors differently and come to a different conclusion. That does not make the conclusion of the Adjudicator unreasonable.

E. CONCLUSIONS

[47] The reviewable errors I have found under Criterion 6 are sufficient to require a new hearing as they could affect the outcome. Given the circumstances, the new hearing should be before a different adjudicator.

[48] The applicant has requested that if reviewable errors are found, this Court should make a determination that the applicant has a catastrophic impairment and then remit the matter to the tribunal to determine what level of benefits should then flow from that. There are a number of problems with that. First, the role of fact-finding does not sit easily with this court, which is working solely through a "paper" record. That is particularly problematic where factors in various categories are interlinked and the area is highly specialized. Further, the appropriate level of benefits is linked to the degree of impairment found and the determination of benefits should therefore be determined by the same decision maker. Again, that is not an appropriate role for this court.

[49] In addition to the 24% for double vision, Dr. Quaid assessed a further 10% impairment for other visual impairments. The Adjudicator did not allow anything for those either. Given that the visual deficits will need to be determined in a new hearing, I consider it is unnecessary for me to elaborate further on the additional deficits found by Dr. Quaid. The new adjudicator will need to hear the evidence on all of the visual impairments in any event.

[50] Likewise, I have not dealt with the issue of Criterion 7 because of its interaction and dependency on the assessment scores from Criterion 6.

[51] Although I have found that deference is due to the findings of the Adjudicator in other categories, the new adjudicator does not owe the same deference to the original findings. Many of these factual issues overlap and many are dependent on credibility findings and other findings of fact from the applicant's evidence. Unless the parties can come to some agreement as to levels of impairment in some categories, this cannot be done by cutting and pasting. A new hearing before a new adjudicator is required with respect to all issues.

[52] Accordingly, the decision and reconsideration decision of the Adjudicator is quashed and a new hearing is ordered before a different adjudicator.

[53] The parties agreed that costs should be fixed at $7,500 payable to the successful party. Therefore, Intact Insurance shall pay costs to Ms. Wilson in that amount, all inclusive.

MOLLOY J.

I agree _____

McWATT ACJ.

I agree _____

SACHS, J.

Released: September 18, 2025

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