Corrigendum Notice	The text of this judgment has been corrected from its original 31 October 2025 release date. As reflected in the corrigendum, paragraph 83 and paragraph 85 have been modified.

Court of Appeal for Saskatchewan

Docket: CACV4226

Citation: *Seib v Saskatchewan Government Insurance*, 2025 SKCA 108

Date: 2025-10-31

Between:

Brady Seib

Appellant
(Appellant)

And

Saskatchewan Government Insurance

Respondent
(Respondent)

Before:	Leurer C.J.S., Jackson and Bardai JJ.A.
Disposition:	Appeal allowed
Written reasons by:	The Honourable Justice Georgina R. Jackson
In concurrence:	The Honourable Chief Justice Robert W. Leurer The Honourable Justice Naheed Bardai
On appeal from:	2023 SKAIA 19, Regina
Appeal heard:	April 28, 2025
Counsel:	Jonathan S. Abrametz for the Appellant Kelsey A. Barnes for the Respondent

Jackson J.A.

I. Introduction

[1] Brady Seib was seriously injured in a motor vehicle accident on July 30, 2015. He was entitled to no fault benefits under *The Automobile Accident Insurance Act*, RSS 1978, c A-35 [*Act*]. Saskatchewan Government Insurance [SGI] determined that he was capable of being employed as of September 18, 2019: *Re Seib* (18 September 2019) Swift Current (SGI) at 1 [*SGI Decision*]. Mr. Seib appealed that decision to the Automobile Accident Insurance Commission [Commission]. The Commission dismissed his appeal: *Seib v Saskatchewan Government Insurance*, 2023 SKAIA 19 [*Commission Decision*].

[2] This is an appeal from the *Commission Decision* following the granting of leave on five questions of law or jurisdiction: *Seib v Saskatchewan Government Insurance* (23 November 2023) Regina, CACV4226 (Sask CA). Taken together, these five questions call for this Court to determine the nature of an appeal to the Commission.

[3] Specifically, this appeal requires the Court to decide whether an appeal to the Commission is in the nature of a de novo hearing and, if so, whether the *Act* limits the Commission to receiving evidence that speaks to the date SGI decided an insured individual's entitlement. These questions are important beyond the four corners of this appeal, but they are particularly significant in this appeal because of the long delays between the accident in question (2015) and the Commission's decision (2023).

[4] For the reasons that follow, I have concluded that, when facts are put in issue, an appeal before the Commission is in the nature of a de novo hearing, and the Commission is required to decide the matter based on all of the relevant evidence presented to it as of the date of the hearing. In short, in the context of the circumstances as they exist here, the Commission misinterpreted its authority and powers under the *Act* and thereby did not consider all of the evidence adduced in relation to the questions that it was required to answer. The *Commission Decision* must be set aside and the matter remitted to the Commission for redetermination.

II. Background

A. From the accident to the termination of benefits

[5] Prior to the accident, Mr. Seib worked at various jobs in the oil and gas and agriculture sectors as a semi-skilled labourer. As has been noted, he was seriously injured in an automobile accident on July 30, 2015. His major injuries included a sternum fracture with internal bleeding, three fractured ribs, bilateral lung contusions, a liver laceration, an abdomen injury, a pelvic fracture, an unstable Chance fracture of the T12 vertebra, and a stable wedge compression fracture of the L3 vertebra. On the day of the accident, he underwent spinal fusion surgery from his T11 to L1 vertebrae. Problems arose resulting in additional surgery being performed in September of 2017. In addition to replacing broken parts of the original fusion hardware, this second surgery extended the fusion from T10 to L2 vertebrae.

[6] SGI provided Mr. Seib with personal injury benefits relating to the injuries caused by the accident in accordance with Part VIII of the *Act*. The benefits included an income replacement benefit paid pursuant to s. 113 of the *Act*.

[7] Subsequently, Mr. Seib progressed through various treatment programs. He was assessed on several occasions, including the following: in July of 2018, SGI conducted a functional capacity evaluation [FCE]; in September of 2018, a vocational assessment report was prepared; and in March of 2019, he completed a further residual capacity evaluation (RCE Summary Report (29 March 2019) [2019 RCE]) over a three-day period. An RCE is conducted when an individual is considered to be at their maximum medical improvement in relation to the injuries caused by a motor vehicle accident and involves an examination by a physician, an evaluation by a psychologist, and a functional capacity evaluation.

[8] One of the important findings of the 2019 RCE was that Mr. Seib met some, but not all, of the physical demands of his pre-accident employment. The writer of the summary concluded as follows (at 6):

> With this assessment, Mr. Seib demonstrated the ability to work at a Light level, with some (limited) Medium level abilities. He demonstrated at least frequent abilities related to sitting and time on his feet. Mr. Seib exhibited significant ongoing limitations with forward bending (limited to rare for short durations) and tolerance for weighted forward reaching. He demonstrated the ability to complete stair and ladder climbing, low level work (bilateral

> upright kneeling), and overhead work on an occasional basis. No functional limitations were identified with upper extremity coordination (gross or fine motor), unweighted forward reaching, or grip strength.

[9] After the completion of the 2019 RCE, SGI made a formal determination under s. 132 of the *Act* that, as of September 18, 2019, Mr. Seib was able to work as a customer and information services representative: see the third paragraph of the *SGI Decision*. In concrete terms, this meant that Mr. Seib's income replacement benefits would come to an end one year later, on September 18, 2020, pursuant to s. 135(1)(b) of the *Act*, whether he could pursue that or any other employment.

[10] Mr. Seib disagreed with the *SGI Decision*. From his perspective, he was unable to work before or after September 18, 2019, and in fact did not work at any job other than for a few short stints at his family's printing business. According to him, continuing pain prevented him from doing even light domestic duties.

[11] Under the *Act*, Mr. Seib had two procedural choices: to appeal to the Court of King's Bench or appeal to the Commission (s. 191(1)). On December 20, 2019, Mr. Seib appealed the *SGI Decision* to the Commission. The Commission's standard-form notice of appeal allows an insured to indicate why they disagree with a decision made by SGI. In the space provided, Mr. Seib wrote, "I am unable to work due to the injuries I have sustained in the motor vehicle collision".

B. Commission hearing

[12] The Commission conducted a hearing from May 1 to 3, 2023.

[13] In addition to receiving all of Mr. Seib's medical records and reports, the Commission heard testimony from Mr. Seib and his witnesses: his girlfriend, his mother, his grandfather, his family physician (Dr. Kassett), and an expert in pain pathologies (Dr. Irvine).

[14] Mr. Seib testified that, almost eight years after the accident, he remained in constant pain and could not bend or reach down. He claimed not to have worked since his second back surgery in September of 2017 and stated that he would be working were he not in so much pain. He described his daily life as largely moving from self-care to resting.

[15] Mr. Seib's girlfriend testified that undergoing the 2019 RCE assessment caused Mr. Seib "excruciating pain", which took him three days to overcome (*Commission Decision* at para 70). She said he could not work at the identified employment, i.e., as a customer services representative, as he could not "sit for an hour answering phone calls" (at para 72).

[16] Mr. Seib's mother testified that Mr. Seib could not "see beyond his pain" (at para 74). She had initially hired Mr. Seib to work in the family sign business on two occasions, but ultimately he was not capable of working for any length of time.

[17] Mr. Seib's grandfather testified that, before the accident, his grandson was able to operate a 13-speed manual transmission grain truck during seeding and harvest. After the accident, he was unable to do so. He also testified that Mr. Seib had no strength, and he was very anxious and nervous.

[18] Dr. Irvine, a medical doctor from Calgary, Alberta, who specializes in rehabilitation and pain management, was qualified to give expert opinion evidence about the cause and treatment of pain as well as the functional limitations of pain. On March 27, 2021, at the request of Mr. Seib's counsel, Dr. Irvine conducted a two-hour independent medical examination of Mr. Seib, which included a direct physical examination and a review of his medical history. In his report, Dr. Irvine stated that Mr. Seib met the diagnosis of chronic pain disorder and that Mr. Seib did not "have the physical or psychological capacity to manage any form of sedentary level employment" ("Physical Medicine and Rehabilitation Specialist Assessment Report" (27 March 2021) at 18). Dr. Irvine wrote as follows in his report (at 15 and 18):

> It is quite clear in the literature that if an individual has not returned to work by 2 years post injury, the likelihood of the ability of returning to work is less than 5%. From what I have seen on physical examination and review of functional capacity evaluation … .
>
> …
>
> 8. … your client is not able to manage short duration light domestic duties without being bedridden for several days after the activity. Given the fact that he has not been able to work for 5 years, his overall fitness for work even at a sedentary level is extremely low. At this stage, he does not have the physical or psychological capacity to manage any form of sedentary level employment.

[19] Dr. Kassett is a family physician who had treated Mr. Seib for anxiety and depression and had prescribed medication to treat these conditions. Dr. Kassett testified that Mr. Seib was "unable to work due to his anxiety, depression, and chronic pain" (*Commission Decision* at para 59).

[20] SGI called three witnesses: Nicole Gallais, Wanda Russell, and Dr. Lesiuk.

[21] Ms. Gallais, a physiotherapist, was involved in three of Mr. Seib's assessments. She testified about the WorkWell testing protocol utilized in FCE and RCE assessments, which was designed to evaluate whether an individual could sustain a level of function for a 40-hour work week. She testified that Mr. Seib "did not report an increase of pain or aggravation of pathology on the second day of testing during the RCE" (at para 27). Ms. Gallais also testified that Mr. Seib's "self-report of being immobile after the completion of the RCE is not necessarily accurate" or consistent with the "objective findings" and his pathology (at para 29).

[22] Ms. Russell, a certified vocational evaluator, prepared a vocational assessment report for Mr. Seib. She found three opportunities for his employment as a customer and information services representative with appropriate employment accommodations within a 100 km radius of his residence.

[23] Dr. Lesiuk, a medical doctor from Winnipeg, Manitoba, who specializes in physical medicine and rehabilitation, was qualified to give expert opinion evidence in those areas. He prepared a report at the request of SGI based on information in Mr. Seib's file, including the report prepared by Dr. Irvine. In his report, Dr. Lesiuk concluded that Mr. Seib "should be capable of performing duties within a sedentary-to-light level. As such, he would be capable of working as a Customer and Information Services Representative" ("Medical Opinion as per Personal Injury Benefits Regulations for Saskatchewan Government Insurance" (24 January 2023) at 11). Dr. Lesiuk testified that the 2019 RCE provided a good assessment of Mr. Seib's capabilities and his functional capacity for employment. He also stated that Mr. Seib's "reported pain does not correlate with function" (*Commission Decision* at para 54). Additionally, he testified that Mr. Seib was on medication to treat psychological conditions, but he felt "there was not enough evidence to support that nonphysical things" would have an impact on Mr. Seib's "ability to perform the activities of daily living and employment" (at para 56).

C. *Commission Decision*

[24] The Commission dismissed Mr. Seib's appeal. In brief terms, it held that Mr. Seib was able to work at the "determined employment at the time of the determination" or, in other words, as of the date of the *SGI Decision*, i.e., September 18, 2019 (*Commission Decision* at para 96). Specifically, the Commission rejected Mr. Seib's evidence and that of his witnesses, saying as follows (all emphasis added):

(a) "Dr. Irvine in his report and testimony did not provide an opinion as to [Mr. Seib's] functional ability to work as of the date of the determination by SGI on December 20, 2019.[1] We place little weight on Dr. Irvine's evidence and report as it did not relate to the relevant timeframe, which is December 20, 2019, the date of the determination" (at para 87);

(b) "Psychological factors were also considered by Dr. Irvine as a reason why [Mr. Seib] could not work. Based on the [2019 RCE], we are satisfied that psychological factors were not an issue at the time of the determination" (at para 93);

(c) "We place little weight on the testimony of Dr. Kassett. It was his opinion that [Mr. Seib] was unable to work due to depression and anxiety. We accept the [2019 RCE] that [Mr. Seib's] psychological symptoms were well controlled by medication at the time of the determination" (at para 95); and

(d) "Based on all the evidence, we are satisfied that [Mr. Seib] met the physical demands for the determined employment at the time of the determination and that SGI had correctly considered the factors as set out in s. 134 of the *Act*" (at para 96).

[1] This date should be September 18, 2019. Mr. Seib placed some importance on this error on the part of the Commission, but, in the circumstances of this appeal, nothing turns on it.

D. Questions of law or jurisdiction in this appeal

[25] Mr. Seib was granted leave to appeal the *Commission Decision* to this Court under s. 194 of the *Act* on the following questions of law or jurisdiction:

(a) Did the Commission err in law by not answering the question raised by s. 132 of the *Act*, which is whether Mr. Seib was "able to work"?

(b) Did the Commission err in law by reading the words "as of the date or time of the determination" into s. 132 of the *Act*?

(c) Did the Commission err in law by misinterpreting s. 132 of the *Act* by limiting its obligation to determining whether Mr. Seib was able to work as of September 18, 2019, and not as of the conclusion of the hearing before it?

(d) Did the Commission disregard relevant evidence by misinterpreting s. 132 of the *Act*?

(e) Did the Commission err in law in determining whether Mr. Seib was able to work as of the date of determination by disregarding or overlooking his and his witnesses' evidence to the effect that he had not been able to work full-time prior to that date or at all after it?

[26] I have concluded that the Commission did not err in the ways described in questions (a) and (b). However, in the overall answer to questions (c), (d), and (e), the Commission misinterpreted the *Act* and the limits of its authority. As a result, the Commission disregarded relevant evidence directed to the issue of whether Mr. Seib was able to work as of the time of the determination and as of the date of the hearing before it. I would allow the appeal and remit the matter to the Commission for a new hearing.

III. Analysis

A. Ability to work and determining an employment: Questions (a) and (b)

1. Mr. Seib's argument re questions (a) and (b)

[27] Under the *Act*, two years after an accident, a claimant's entitlement to income replacement benefits becomes tied to whether they are able to pursue employment even if it is different from that upon which their income replacement benefit is calculated. This feature of the no fault regime is found in s. 132 of the *Act*. The first two questions in this appeal call for this Court to interpret that provision as well as s. 134, which provides direction as to its proper application.

[28] Sections 132 and 134 of the *Act* read in relevant part as follows:

> **Determined employment after second anniversary**
> **132** (2) Following the second anniversary of the accident, the insurer may determine an employment for an insured if the insured:
>
> (a) is able to work; but
>
> (b) is not able because of the accident to hold an employment from which the yearly employment income is equal to or greater than the yearly employment income on which an insured's income replacement benefit is calculated.
>
> …
>
> **Factors in determining employment**
> **134**(1) In determining an employment pursuant to subsection 119(4) or section 132 or 133, the insurer shall consider the following factors, if applicable:
>
> (a) the education, training, work experience and physical and intellectual abilities of the insured at the time of the determination;
>
> (b) any knowledge or skill acquired by the insured in a rehabilitation program approved pursuant to this Part;
>
> (c) the insured's intended employment at the date of the accident;
>
> (d) whether the determined employment is available in the jurisdiction in which the insured resides;
>
> (e) whether the determined employment is available:
>
> (i) on a regular and full-time basis; or
>
> (ii) if it would not be possible for the insured to hold employment on a regular and full-time basis, on a part-time basis;
>
> (f) any other prescribed factors.
>
> (Emphasis added)

[29] Mr. Seib submits that the Commission was required to decide if SGI had proven on a balance of probabilities that he was able to work under s. 132 before taking the step of determining an employment for him under s. 134. He asserts that the Commission failed to adjudicate what he calls the foundational question in s. 132, which is whether he is able work, conflating it instead with the s. 134 determination, without ever finding that he was able to work.

[30] He points to several parts of the *Commission Decision*, saying that they demonstrate that the Commission never did decide whether he was able to work. For example, the Commission stated the issue before it in these ways: "Is the Appellant able to hold the determined employment of a Customer and Information Services Representative pursuant to s. 132 of the *Act*?" and "The issue in this appeal is whether the Appellant is able to work in the determined employment as a customer and information services representative" (at paras 4 and 84). Then, in the third-to-last paragraph, the Commission wrote, "Based on all the evidence, we are satisfied that the Appellant met the physical demands for the determined employment at the time of the determination and that SGI had correctly considered the factors as set out in s. 134 of the *Act*" (at para 96).

[31] With respect to all of the questions of statutory interpretation arising in this appeal, Mr. Seib refers the Court to s. 10 of *The Legislation Act*, SS 2019, c L-10.2, *Regina Bypass Design Builders v Supreme Steel LP*, 2021 SKCA 82 at paras 23 and 25, and *Ballantyne v Saskatchewan Government Insurance*, 2015 SKCA 38 at para 19, 49 CCLI (5th) 37, for the proposition that the Court should resolve any ambiguity in the *Act* in his favour.

2. The Commission correctly interpreted the power to determine employment

[32] Before SGI makes a decision as to whether an insured is able to work, it may require the insured to undergo a series of tests, including an FCE and vocational testing. Based on the result of those tests, SGI decides whether the insured is able to work and then proceeds to determine a suitable alternate employment. Section 132 permits SGI to determine an employment for an insured who is "able to work" but unable "to hold an employment from which the yearly employment income is equal to or greater than the yearly employment income on which an insured's income replacement benefit is calculated" (ss. 132(2)(a) and (b)). Section 134 lists factors to consider to determine an employment.

[33] I agree with Mr. Seib that, under the *Act*, SGI (or the Commission, if it is making the decision) must first conclude that a claimant is able to work before it goes on to consider if the claimant is capable of employment. However, the *Commission Decision* does not suggest that the Commission interpreted the *Act* differently.

[34] By tying the issue to whether Mr. Seib is "able to hold the determined employment of a Customer and Information Services Representative" (at para 4), the Commission simply took a shortcut in describing its analysis. The Commission was clearly aware that Mr. Seib contended that he was "unable to work at *any* job" (emphasis added, at para 85). In this context, by reaching a conclusion that Mr. Seib was able to work at the determined employment, the Commission must be taken to have determined that he was able to work at some occupation, which is the inquiry contemplated in s. 132(2)(a) of the *Act*. I cannot agree that by combining the two questions of whether Mr. Seib is able to work and whether he can work at the determined employment the Commission committed an error in law.

[35] Saying Mr. Seib is able to work at the determined employment is a statement that he is able to work. If the Commission had cast the issue as being whether he was able to work based on the assessments that had been conducted, it would have arrived at the same place, which is that Mr. Sieb's ability to work at the determined employment is a decision that he is able to work.

[36] It may have been preferable for the Commission to have said directly in paragraph 96 (see paragraph 24(d) herein) that SGI did not err when it found that Mr. Seib was able to work, but this is in effect what the Commission said. Paragraph 96 must be read as saying that if a person can meet the physical demands of an employment, they are able to work.

3. Conclusion: Ability to work and determining an employment (questions (a) and (b))

[37] The reasons do not show that the Commission disregarded its obligation to consider Mr. Seib's ability to work as a precursor to determining an employment.

B. Limiting the consideration of evidence to the time of determination: Question (c)

1. Legislation and Mr. Seib's argument re question (c)

[38] Mr. Seib's next argument is that the Commission erred by focusing on a specific date or time, i.e., September 18, 2019, and not considering whether he was able to work as of when the Commission heard evidence in May of 2023. This argument requires the Court to consider the ambit of the Commission's authority when hearing appeals from an insured. Resolution requires the following provisions of the *Act* to be interpreted:

> **Insurer's decisions final**
> **188** Notwithstanding any other *Act* or law, any decision made or action taken by the insurer pursuant to this Part is final and conclusive and may be reviewed only in accordance with this Division.
>
> …
>
> **Right to appeal**
> **191**(1) A claimant may appeal a decision of the insurer pursuant to this Part to either the Court of King's Bench or the appeal commission … .
>
> **Conduct of appeal before appeal commission**
> **193**(1) This section applies to appeals before the appeal commission.
>
> …
>
> (4) Subject to this section, an appeal to the appeal commission is to be conducted in the prescribed manner.
>
> (5) Unless the claimant puts them in issue, the insurer's finding of facts must be adopted on appeal.
>
> (6) If the claimant puts the insurer's finding of facts in issue, the appeal commission may hold a hearing to determine the facts.
>
> (7) On an appeal, the appeal commission may:
>
> (a) set aside, confirm or vary the insurer's decision; or
>
> (b) make any decision that the insurer is authorized to make pursuant to this Part.
>
> …
>
> **Evidence**
> **196.3**(1) In the case of a hearing or review before the appeal commission, the appeal commission may receive any evidence that, in the opinion of the appeal commission, is relevant to the matter being heard or reviewed.
>
> (2) The appeal commission is not bound by rules of law concerning evidence.
>
> (3) In conducting a hearing or review, each member of the appeal commission has the powers conferred on a commission by sections 11 and 15 of *The Public Inquiries Act, 2013*.

2. The Commission erred by limiting its authority to the time of determination

[39] The issue of whether the Commission erred by confining its decision to the facts known by SGI on September 18, 2019, requires this Court to decide a preliminary question of law: i.e., What is the nature of an appeal to the Commission?

a. A Commission appeal is a hearing de novo

[40] Whether any appeal is to be conducted de novo is a matter of statutory interpretation. Indeed, given the significant differences between an appeal on the record and a hearing de novo, clear statutory language is required before an appeal can be understood to be in the nature of a de novo hearing: Donald J.M. Brown, *Civil Appeals*, loose-leaf (Rel No 3, October 2025) (Toronto: Thomson Reuters, 2009) at §2:18. A declaration contained in the governing legislation to the effect that an appeal shall be de novo is not required, but the judicial exercise of construing the legislation must reveal that the Legislature intended that conclusion.

[41] The most recent decision of the Supreme Court considering the process of discerning legislative intent is *Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21, 504 DLR (4th) 1, wherein the majority of the Supreme Court wrote as follows:

> [87] The usual principles of statutory interpretation apply when an administrative decision maker interprets a provision (*Vavilov*, [2019 SCC 65] at para. 120). It is well established that a statutory interpretation analysis must be guided by the modern approach: "… the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, quoting E.A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; see also *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *Vavilov*, at para. 117).
>
> …
>
> [102] It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences (*Rizzo*, at para. 27). An interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, if it is incompatible with other provisions, or if it defeats the purpose of the statute or renders some aspect of it pointless or futile (para. 27). …
>
> …
>
> [107] Words take their colour from their surroundings (J. Willis, "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6). In the world of statutory interpretation, there is a presumption "that the provisions of [a statute] are meant to work together … as parts of a functioning whole" (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at

> p. 323), which form together into a rational, internally consistent framework (*Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19, [2016] 1 S.C.R. 306, at para. 28).

[42] Applying these principles, only one provision of the *Act* could be said to point to appeals to the Commission as being on the record, i.e., s. 188. In language usually employed to signal that deference is owed to the decision maker, s. 188 declares that SGI's decisions are "final and conclusive". However, s. 188 goes on to state that such decisions "may be reviewed only in accordance with this Division". In light of the legislative choice to permit an appeal to the Commission under s. 191, it must be taken that s. 188 is directed to the issue of whether a party is able to seek judicial review of SGI's decisions and not to constrain the powers of the Commission. The balance of all relevant sections of the *Act* demonstrates that the Legislature intended that Commission appeals, where facts are put in issue, are de novo appeals. I reach this conclusion for two main reasons: SGI is not a tribunal and the Legislature has given the Commission broad powers.

i. SGI is not a tribunal

[43] This Court has already held that the Legislature intended that, in the context of the no fault regime created under the *Act*, SGI acts as a first-party insurer, not as an administrative tribunal: *Saskatchewan Government Insurance v Schira*, 2020 SKCA 88 at paras 36–38 and 46, 450 DLR (4th) 673, leave to appeal to SCC refused, 2021 CanLII 1111 [*Schira*]. The Court in *Schira* arrived at this conclusion by an extensive review of the *Act*:

> [37] A number of considerations not referenced in *Terry* [2006 SKCA 96] support the idea of seeing SGI's role as being that of a first-party insurer:
>
> > (a) The *Saskatchewan Government Insurance Act, 1980* frames the powers and capacities of SGI in terms that contemplate it operating as a "business" rather than as an adjudicator or an administrative tribunal. Section 9(1) of that *Act* reads as follows:
> >
> > > 9(1) The corporation may:
> > >
> > > > (a) engage in and carry on the business of insurance and reinsurance in all of its branches;
> > > >
> > > > (b) operate and administer any other plan or plans of insurance that may be authorized by any other *Act*;
> > > >
> > > > (c) perform any functions in relation to any program of the government or agency of the government that may be authorized under any statute, regulation or order or that may be assumed by the corporation by agreement with the government or other agency, and the corporation may

> stipulate for and receive any compensation in respect of the functions performed by it that the statute, order, regulation or agreement allows;
>
> …
>
> (g) acquire by purchase or otherwise, hold as owner, tenant or otherwise, and take options on, for its own use and benefit, any real property:
>
> > (i) necessary or required for the conduct of its business;
> >
> > (ii) conveyed, mortgaged or hypothecated to it by way of security;
> >
> > (iii) acquired and held by it as an investment; or
> >
> > (iv) conveyed to it in satisfaction in whole or in part in respect of debts and judgments;
>
> and may sell, lease, or otherwise dispose of the whole or any part of such real property;
>
> (h) engage in or carry on any business or activity that is ancilliary to the business of insurance;
>
> …
>
> (j) purchase and take over all or any portion of the business and property of any other insurer, and the provisions of *The Insurance Act* prescribed in the regulations apply, with any necessary modification, in the same manner and to the same extent as if the corporation were licensed pursuant to *The Insurance Act.*

(b) The no fault scheme in issue here is found in Part VIII of The *Automobile Accident Insurance Act*.

(c) SGI, as per s. 2(1)(w) of the *Act*, is referred to throughout the *Act*, including in Part VIII, as the "insurer", not as an adjudicator or administrative tribunal. See, for example: ss. 107.1(2), 109.1, 113(3).

(d) The *Act* refers throughout, including in Part VIII, to an individual who is entitled to benefits as an "insured". See, for example: ss. 107(1), 108, 113(2).

(e) The *Act* employs throughout, including in Part VIII, the concepts, terminology and language of the insurance industry. Thus, it refers, for example, to the amounts payable to individuals as "benefits" (for example, at s. 113(2)), and refers to those insured who have not yet been determined to be entitled to benefits as "claimants" (for example, at s. 200(a)). The *Act* also, by way of further illustration, refers to rights of subrogation (for example, at s. 212).

(Emphasis omitted)

[44] Since SGI is not an administrative tribunal, there is no record for the Commission to review. More significantly, because SGI is not a tribunal that holds a hearing before making a determination as to benefits under the *Act*, an appeal from one of its decisions – either by way of an appeal to the Court of King's Bench or to the Commission – is the first opportunity that a claimant will have to fully present their case. These factors support the conclusion that the *Act* contemplates that an appeal from an SGI determination is in the nature of a de novo hearing.

ii. The Commission has broad powers

[45] Second, the Legislature has conferred broad powers on the Commission consistent with it making de novo decisions:

(a) the Commission conducts "a hearing", not an appeal, if the "claimant puts the insurer's finding of facts in issue" (s. 193(6));

(b) in addition to the authority to "set aside, confirm or vary the insurer's decision", the Commission is empowered to "make any decision that the insurer is authorized to make pursuant to this Part" (s. 193(7));

(c) it "may receive *any* evidence that, in the *opinion* of the appeal commission, is relevant to the matter being heard or reviewed" (emphasis added, s. 196.3(1)); and

(d) "each member of the appeal commission has the powers conferred on a commission" (s. 196.3(3)) by s. 11 of *The Public Inquiries Act, 2013*, SS 2013, c P-38.01, which includes the authority to summon anyone to give evidence and to compel the production of all records or other property "that may relate *in any way* to the matter that is the subject of the inquiry" (emphasis added).

[46] It is also worth noting that s. 91 of *The Personal Injury Benefits Regulations*, RRS c A-35 Reg 3, provides that at a "hearing by the appeal commission, there is to be full right: (a) to examine, cross-examine and re-examine all witnesses; and (b) to present evidence in defence and reply and to make submissions respecting the evidence before the commission".

[47] From this, one must conclude that the Commission is not limited to the record that SGI considered and neither an insured appealing to the Commission nor the insurer is required to apply

to adduce fresh evidence. All relevant evidence may be presented by either party. These are not the powers of a reviewing tribunal; rather, they describe the tools needed by a tribunal charged with hearing a matter de novo.

[48] In *Allary v Saskatchewan Government Insurance*, 2006 SKCA 89, 40 CCLI (4th) 161 [*Allary*], which pre-dates *Schira*, the appellant had originally asserted that when facts are put in issue it was necessary "to hold a trial de novo" but then resiled from that position in oral argument (at para 11). Nonetheless, the Court went on to partially consider the issue and determined that the language in s. 193(7) would not "contemplate a trial de novo" (at para 13) and appears to hold that s. 193(6) changes the scenario: "Subsection 193(6) of the *Act*, however, provides that the appeal commission may hold a hearing when the appellant puts the facts in issue. The appellant has the right pursuant to s. 91 of the *Regulations* to present evidence and to examine and cross-examine all witnesses. The facts are in issue in this case" (at para 13).

[49] The Court in *Allary* went on to speak in standard-of-review terms, saying that the "appropriate standard is correctness" (at para 19). In light of *Schira*, which holds that SGI does not act as an administrative tribunal, the Commission does not apply a standard of review as such but rather has the role of determining disputes between insureds and their insurer, SGI. It is the hallmark of a de novo hearing that the parties call witnesses and the decision maker owes no deference to the prior decision maker: *Yashcheshen v Saskatchewan (Ministry of Health)*, 2022 SKCA 68 at para 47, 2 Admin LR (7th) 169, and *Pacer Construction Holdings Corporation v Pacer Promec Energy Corporation*, 2018 ABCA 113 at para 66, 67 Alta LR (6th) 281. Simply put, the evidentiary record before the Commission can be markedly different than the record that was before SGI when it made its decision, and so it would make little sense to adopt a deferential standard in the context of a de novo hearing.

[50] Support for the conclusion that the Legislature intended Commission appeals to amount to a de novo hearing is found in *Schira*. In *Schira*, the principal issue was the procedure to follow when a party appeals a decision of SGI to the Court of King's Bench. As part of its reasoning process, the Court concluded that an appeal to the Court of King's Bench pursuant to s. 191 of the *Act* operates as an appeal de novo and not an appeal on the record.

[51] While the Court in *Schira* did not address whether appeals to the Commission are also conducted de novo, it would be a most peculiar, if not an absurd result, if appeals from SGI's decision letters to the Court of King's Bench were de novo but appeals to the Commission were not. Appeals before the Commission are intended to be "accessible and much less costly" (Kenneth Cooper-Stephenson (Chair), et al., *Personal Injury Protection Plan Review Committee: Final Report* (Regina: Review Committee, 2000) at 168), and the rules of evidence do not apply (see s. 196.3(1) of the *Act*), making it easier for self-represented litigants to present their case before the Commission: see *Van de Sype v Saskatchewan Government Insurance*, 2020 SKCA 18 at para 110. However, despite these differences in the routes of appeal, in my opinion, like an appeal to the Court of King's Bench, where facts are placed in issue an appeal to the Commission is an appeal de novo.

[52] Finally, it should be noted that, while the Commission itself has not always been consistent as to its authority (largely because of *Terry v Saskatchewan Government Insuranc*e, 2006 SKCA 96, 41 CCLI (4th) 18)), the present trend in its jurisprudence has been to conceive of itself as acting de novo: e.g., *D.I. v Saskatchewan Government Insurance*, 2024 SKAIA 12 at para 27.

[53] In conclusion on this preliminary question, an appeal to the Commission pursuant to s. 191 of the *Act* where facts are placed in issue operates as an appeal de novo and not as an appeal on the record.

b. The Commission was required to find facts as of the date of the hearing before it

[54] Turning back to the central issue raised by Mr. Seib, he argues that SGI is required to make its determination as to his ability to work based on the circumstances that exist when it makes its decision, but that the Commission's obligation is broader than that. He says that, where an insured asserts that they were and continue to be unable to work, the Commission must determine whether that person is able to work within the meaning of s. 132 and s. 134 as of when *it* concludes hearing evidence.

[55] This too is a question of statutory interpretation involving the authority and the relative roles of each of SGI (as the insurer) and the Commission (as the body charged with resolving disputes between SGI and its insureds). On this point, I will begin with SGI's authority to

determine an employment after a claimant has been receiving benefits for two years (s. 132) and the factors to be taken into consideration in determining employment (s. 134).

[56] Sections 132 and 134 contain certain temporal limits or directions:

(a) SGI determines an employment "[f]ollowing the second anniversary of the accident" (s. 132(1));

(b) SGI considers factors (some of which are measured as of a particular date or time), which I have ordered chronologically:

(i) s. 134(1)(c) – "the insured's intended employment at the date of the accident" – the situation fixed in time by that date;

(ii) s. 134(1)(b) – "any knowledge or skill acquired by the insured in a rehabilitation program approved pursuant to this Part" – what the insured has learned since the date of the accident; and

(iii) s. 134(1)(a) – "the education, training, work experience and physical and intellectual abilities of the insured <u>at the time of the determination</u>" (emphasis added) – the insured's physical and intellectual status as of when SGI's makes its determination.

[57] According to SGI, its decision-making power is fixed in time as of "the time of the determination". As an extension of this argument, SGI argues that any change or reconsideration of an insured's ability to work can only be addressed by the relapse provisions contained in the *Act*:

> **Relapse within two years**
> **140**(1) This section applies if an insured suffers a relapse of a bodily injury within two years after the later of:
>
> (a) the end of the last period for which the insured received a benefit pursuant to this Division, other than a benefit pursuant to section 126 or 135; and
>
> (b) the date of the accident, if the insured was not entitled to a benefit pursuant to this Division before the relapse.
>
> (2) An insured who is unable to hold an employment held by the insured at the date of the relapse is entitled to a benefit pursuant to this Division.

> (3) The insured is entitled to a benefit pursuant to subsection (2) from the date of the relapse.

[58] On a purposive review of the *Act*, SGI's narrow interpretation of the Commission's role is not consistent with that body acting de novo. In particular, it is worthwhile to re-examine s. 193(7) and s. 196.3:

> **Conduct of appeal before appeal commission**
>
> **193**(7) On an appeal, the appeal commission may:
>
> (a) set aside, confirm or vary the insurer's decision; or
>
> (b) make any decision that the insurer is authorized to make pursuant to this Part.
>
> …
>
> **Evidence**
>
> **196.3**(1) In the case of a hearing or review before the appeal commission, the appeal commission may receive any evidence that, in the opinion of the appeal commission, is relevant to the matter being heard or reviewed.

[59] Not only can the Commission "set aside, confirm or vary" SGI's decision letters, it may "make *any* decision" that SGI *is* authorized to make under Part VIII and may, in aid of doing so, receive "*any* evidence" that it perceives *is* relevant (emphasis added). The use of the present tense in these expansive powers expresses the Legislative will that SGI acts on the evidence as of the time of determination, but the Commission is required to decide the matter based on all of the relevant evidence presented to it as of the date of the hearing before it.

[60] Mention must also be made of two other provisions of the *Act* bearing on the role and powers of the Commission. First, s. 195(1) provides that a Commission decision may be varied at any time on application from either the insured or the insurer:

> **Variation of compensation**
>
> **195**(1) A decision of the Court of King's Bench or the appeal commission made pursuant to section 191 or 193 may, at any time, be varied on the application of either the claimant or the insurer.
>
> (2) A party who wishes to have a decision varied shall apply for leave to make an application for a variation to the Court of King's Bench or the appeal commission … .
>
> (3) If the Court of King's Bench or the appeal commission is of the opinion that the claimant has established a prima facie case that there has been a material change in the claimant's circumstances, the Court of King's Bench or the appeal commission may grant leave to make an application for a variation.
>
> (4) The provisions of section 192 or 193, as the case may be, apply, with any necessary modification, to an application for a variation pursuant to this section.

[61] If the Commission can hear an application to vary compensation after it renders a decision, it must be able to provide a remedy with respect to material evidence arising after the date of SGI's decision to determine an employment. Otherwise, in a case where there is a long delay, it would run counter to the notion that the Commission-route to dispute resolution is intended to be accessible. An insured is required to place all relevant evidence before the Commission. If the Commission determines from that evidence that there has been a change in circumstances, it must be able to act on that determination.

[62] Secondly and finally, SGI has a continuing obligation to ensure that claimants receive the benefits to which they are entitled: "The insurer shall advise and assist every claimant and shall endeavour to ensure that every claimant is informed of and receives the benefits to which the claimant is entitled" (s. 171). Again, if the evidence discloses that, at some time after SGI's determination, the insured became eligible for benefits, not only does the Commission have obligations, but SGI does as well.

3. Conclusion: Time of determination (question (c))

[63] In conclusion, the Commission must decide every appeal based on the evidence presented to it. In other words, the Commission is not restricted to the evidence that SGI considered in making its determination. Nor is the Commission limited to the time mentioned by s. 134(1)(a), i.e., the time of SGI's determination. That said, however, there are both legal and practical limits on the Commission's authority. The Commission's role, like that of a court, is confined to the notice of appeal and the facts that the appellant puts in issue. The Commission is not conducting a public inquiry, notwithstanding its powers under *The Public Inquiries Act*. It is conducting a hearing de novo of the issues that are relevant to the matter placed before it.

[64] A review of the Commission's past decisions demonstrates its understanding of how the notice of the appeal and the parties' arguments shape each appeal before it. This comment is well-illustrated by *E.L. v Saskatchewan Government Insurance*, 2020 SKAIA 18. Decided one month before *Schira*, *E.L.* is a response to earlier jurisprudence that took the view that SGI, when deciding whether to pay any claim, acted as an administrative tribunal. The Commission chair observed that "issues change and develop after the decision letter" (at para 23) and gave, as examples, the following:

(a) "cases when the notice of appeal puts the facts in issue and [raises] new grounds" (at para 24);

(b) "the Appellant may file subsequent medical reports to support disputed facts" (at para 25); and

(c) "the Appellant's inordinate delay in bringing the appeal that makes much of the information relied on in the original decision very stale" (at para 26).

These are simply some of the realities that influence the type of evidence that the Commission may be called upon to hear, and the issues it will be required to resolve.

[65] It must also be observed that there will be appeals where the time of the determination as identified by SGI may be relevant. For example, an insured may only be challenging SGI's determination that they were able to work as of that time. In such a circumstance, the Commission receives evidence, which can arise both before and after the determination, in order to address the appeal from SGI's determination that the insured was able to work as of the time of determination.

[66] In this appeal, however, Mr. Seib placed in issue that he was unable to work – an assertion he continued to make before the Commission when the hearing was heard four years after the *SGI Decision*, which was eight years after the accident.

[67] For the above reasons, the Commission erred in law by confining its decision-making to whether Mr. Seib was able to work as of the time of SGI's determination as opposed to whether he was able to work as of when the Commission heard his appeal.

C. Evidence to consider as to Mr. Seib's ability to work: Questions (d) and (e)

1. Mr. Seib's argument re questions (d) and (e)

[68] Questions (d) and (e) are directed to the issues of whether the Commission disregarded relevant evidence either because of how it interpreted s. 132 or because it misinterpreted the evidence before it.

[69] As previously indicated, the Commission heard documentary and oral evidence spanning the period before and after September 18, 2019. It rejected Mr. Seib's evidence that he was unable to work as of that fixed date, and it similarly rejected the testimony of his witnesses in part because they did not speak to the question of whether he was able to work as of September 18, 2019. For example, and to repeat, the Commission rejected Dr. Irvine's evidence, saying "Dr. Irvine in his report and testimony did not provide an opinion as to the Appellant's functional ability to work as of the date of the determination by SGI … . We place little weight on Dr. Irvine's evidence and report as it did not relate to the relevant time frame", i.e., September 18, 2019 (at para 87).

[70] Mr. Seib argues that the Commission misconceived its role and his evidence when making this and similar statements. I agree with his submissions.

2. The Commission committed two errors of law

[71] The Commission's reasons reveal two errors of law.

[72] First, apart from being obligated to make a decision as of the date of the hearing before it, the Commission was required, as a matter of law, to consider all of the evidence to decide whether Mr. Seib was able to work as of September 18, 2019. That evidence included post-determination evidence addressing the issue of whether Mr. Seib was able to work as of the time of determination. In other words, the question that the Commission had to ask itself was, if Mr. Seib was unable to work after the date of determination, does that call into question SGI's finding that he was able to work as of the earlier date.

[73] The second error of law, as Mr. Seib's counsel points out, is that Dr. Irvine's evidence *did in fact* address whether Mr. Seib was able to work as of the time of determination. Dr. Irvine opined that a person in Mr. Seib's position, who had not worked for two years post-accident, would be unlikely to work again. The Commission was free to reject Dr. Irvine's opinion on that point, but it did not do so because it disagreed with his opinion. Instead, the Commission rejected the whole of Dr. Irvine's evidence on the erroneous footing that his opinion did not relate to the relevant time frame.

3. Conclusion: Evidence to consider (questions (d) and (e))

[74] Because the Commission misinterpreted its authority under s. 132, it disregarded relevant evidence. It also erred in law in assessing whether Mr. Seib was able to work as of the time of determination by disregarding or overlooking his and his witnesses' evidence to the effect that he had not been able to work full-time prior to that date or after it.

IV. Remedy

[75] In the event of his success on appeal, Mr. Seib requests that this Court find that he requires further no fault benefits, including income replacement benefits and further supportive benefits, as provided by Part VIII of the *Act*. In essence, he asks this Court to step into the shoes of the Commission.

[76] Section 12 of *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, states that the Court has the power to "make any decision that could have been made by the … tribunal appealed from" or to "make any additional decision that it considers just" (s. 12(d) and s. 12(f)). In the circumstances of this appeal, it is not possible to exercise either of these powers.

[77] A decision as to Mr. Seib's entitlement to benefits under the *Act* depends on whether he is able to work. This is a finding of fact that remains in contention. Given this, the only remedy available to this Court is to remit the matter to the Commission for a new hearing.

V. Costs

[78] Mr. Seib requests reimbursement for his costs throughout on a complete indemnity basis.

[79] Costs awards before the Commission are governed by s. 193(11) of the *Act*, which only permits an insured to receive costs if they are successful before the Commission:

> **Conduct of appeal before appeal commission**
>
> **193**(11) Subject to the regulations, the insurer shall reimburse a claimant who is successful on appeal pursuant to this section or section 194 for the claimant's costs in the prescribed amount.

[80] The question thus arises as to whether Mr. Seib is entitled to his costs before the Commission since he was not successful in the first instance but has succeeded in this Court. He has still not been successful in his claim, in the sense that it has still not been determined that he is entitled to benefits, but this Court has now found that the Commission committed errors in law in rejecting that claim for the reasons that it gave.

[81] The *Act* does not provide a solution to this problem. In such circumstances, recourse should be had to the authority given to this Court under s. 12 of *The Court of Appeal Act, 2000,* to make a just order.

[82] The costs to mount an appeal to the Commission in a complex case such as this are considerable. On an appeal from a decision of the Court of King's Bench when it has heard an appeal from a decision of SGI under s. 191, it would be possible for this Court to make a costs order for the appeal before the King's Bench. In so far as possible, having regard for differences in process, a person who chooses the Commission route should not be disadvantaged by opting to pursue an appeal to the Commission. For these reasons, and because the Commission, in adopting the approach that it did, was simply following the submissions made to it by SGI, I would award Mr. Seib the costs to which he would have been entitled if he had been successful in his appeal to the Commission.

[83] The amount of those costs is determined by the *Act* and the jurisprudence of this Court as set out in *Schira* at paras 86, 87, and 94 and *Cop v Saskatchewan Government Insurance*, 2019 SKCA 75 at para 63, [2020] 2 WWR 396 [*Cop*]. Mr. Seib is entitled to his costs before the Commission on column 1 of the Tariff of the Court of King's Bench as that Tariff existed as of the date of the hearing before the Commission.

[84] Mr. Seib also seeks enhanced costs in this Court. A successful party in an appeal to this Court is generally entitled to an award of costs according to the value of the claim. This case is much like *Cop,* where the Court ordered that the insured receive costs under Column 4 because of the value of the benefits at issue in the appeal. Costs at that level will be ordered here for the same reason.

VI. Conclusion

[85] I would set aside the *Commission Decision* and order that Mr. Seib is entitled to his costs from SGI for his appeal to the Commission according to these reasons. I would further order that he is entitled to his costs of this appeal and for his leave application in this Court on Column 4.

"Jackson J.A."

Jackson J.A.

I concur.

"Leurer C.J.S."

Leurer C.J.S.

I concur.

"Bardai J.A."

Bardai J.A.

Court of Appeal for Saskatchewan

Neutral Citation: 2025 SKCA 108 **Corrigendum Date: 2025-12-23**

Brady Seib	Appellant (Appellant)
and	
Saskatchewan Government Insurance	Respondent (Respondent)

Corrigendum

The following modification has been made to the above-noted judgment, which was originally released on 2025-10-31.

Paragraph 83 has been replaced as follows:

Original Text

> [83] The amount of those costs, however, cannot exceed what an insured would receive if they had succeeded before the Commission in the first instance. They are limited and governed by s. 96 of *The Personal Injury Benefits Regulations*:
>
> > **Reimbursement for expenses**
> > **96**(1) For the purposes of subsection 193(11) of the Act, the insurer shall reimburse a claimant up to a maximum amount of $3,316 for all reasonable expenses incurred from the date of filing the appeal to the date of the judgment or the appeal commission's decision.
> >
> > (2) For the purposes of subsection (1), "reasonable expenses" includes meals, lodging, travel expenses and expert reports.
>
> Mr. Seib is limited to those costs at the Commission level: see *Cop v Saskatchewan Government Insurance*, 2019 SKCA 75 at para 63, [2020] 2 WWR 396 [*Cop*].

Corrected Text

> [83] The amount of those costs is determined by the *Act* and the jurisprudence of this Court as set out in *Schira* at paras 86, 87, and 94 and *Cop v Saskatchewan Government Insurance*, 2019 SKCA 75 at para 63, [2020] 2 WWR 396 [*Cop*]. Mr. Seib is entitled to his costs before the Commission on column 1 of the Tariff of the Court of King's Bench as that Tariff existed as of the date of the hearing before the Commission.

Paragraph 85 has been replaced as follows:

Original Text

> [85] I would set aside the *Commission Decision* and order that Mr. Seib is entitled to his costs from SGI for his appeal to the Commission according to *The Personal Injury Benefits Regulations*. I would further order that he is entitled to his costs of this appeal and for his leave application in this Court on Column 4.

Corrected Text

> [85] I would set aside the *Commission Decision* and order that Mr. Seib is entitled to his costs from SGI for his appeal to the Commission according to these reasons. I would further order that he is entitled to his costs of this appeal and for his leave application in this Court on Column 4.