Court of Appeal for Saskatchewan **Citation: *Korvemaker v Whitley*, 2026 SKCA 15**

Docket: CACV4356 **Date: 2026-01-29**

Between:

Sherry Korvemaker

Appellant
(Defendant)

And

Robert Whitley

Respondent
(Plaintiff)

Before:	Schwann, Tholl and Kalmakoff JJ.A.
Disposition:	Appeal allowed
Written reasons by:	The Honourable Justice Jeffery D. Kalmakoff
In concurrence:	The Honourable Justice Lian M. Schwann The Honourable Justice Jerome A. Tholl
On appeal from:	QBG-SA-00375-2012, Saskatoon (SKKB)
Appeal heard:	November 25, 2025
Counsel:	Lauren Wihak, K.C., for the Appellant Jonathan Abrametz and Henry Oltman for the Respondent

Kalmakoff J.A.

OVERVIEW

[1] The outcome of this appeal turns on whether *The Automobile Accident Insurance Act*, SS 1978, c A-35 [*AAIA*], permits the plaintiff, a no-fault beneficiary who was injured in an automobile accident, to recover damages in a tort action for income loss after age 65, or whether such recovery is precluded.

[2] On September 9, 2010, Sherry Korvemaker struck Robert Whitley with her automobile as he was walking across the street at an intersection, causing him serious injuries. Ms. Korvemaker was insured by Saskatchewan Government Insurance [SGI]. Mr. Whitley also held an insurance policy with SGI. At the time, he had not made a tort election under s. 40.2 of the *AAIA*.

[3] Mr. Whitley was 58 years old and was employed as a commercial pilot when the accident occurred. Because of his injuries, he was never able to return to his job. SGI paid no-fault benefits to him, including an income replacement [IR] benefit, under Part VIII, Division 4 of the *AAIA* until he turned 65, in November of 2016. Mr. Whitley also received a one-time lump sum payment from SGI, pursuant to s. 128 of the *AAIA*, at that time. He received no further benefit payments from SGI after that point.

[4] Mr. Whitley commenced a civil action against Ms. Korvemaker, seeking to recover damages for economic loss, i.e., any past or future income loss that exceeded the employment income attributable to a person in his position under Division 4 of Part VIII. In her statement of defence, Ms. Korvemaker pleaded that Mr. Whitley's claim had to be adjudicated through the *AAIA* framework, and that his remedies were limited to those available to a no-fault beneficiary under that Act.

[5] Mr. Whitley's claim proceeded to a trial before a judge and jury. Liability, causation and contributory negligence were all contested at trial. The jury resolved each of those issues in Mr. Whitley's favour. Those aspects of the verdict are not challenged on appeal.

[6] With respect to the question of damages, Ms. Korvemaker argued at trial that, even if she were to be found liable for causing Mr. Whitley's injuries, he should not be awarded any damages because the facts set out in an Agreed Statement of Facts demonstrated that he had received all the no-fault benefits to which he was entitled under the *AAIA*, and the legislation prohibited recovery of damages for any income loss that he may have suffered once his entitlement to those benefits ended at age 65.

[7] Mr. Whitley did not dispute that he had been fully compensated with respect to any loss of income he suffered prior to age 65, through the no-fault IR benefits and top-up payments he had received pursuant to the *AAIA*. However, his position with respect to damages was that he would have continued to work as a pilot until age 71 if the accident had not occurred, and that he should be able to recover for lost income that he would have earned *after* his entitlement to receive an IR benefit under the *AAIA* ended. In that regard, Mr. Whitley led evidence from an economic consultant who provided an opinion concerning the income he would have earned between age 58 and 65, and between age 65 and 71, if he had been able to continue working as a pilot.

[8] During the trial, Ms. Korvemaker and Mr. Whitley were given the opportunity to make submissions regarding the content of the trial judge's final instructions to the jury. Ms. Korvemaker requested that the judge instruct the jury on the relevant provisions of the *AAIA*, and that he explain the limited basis upon which a no-fault beneficiary who had not made a tort election could recover damages for income loss. She took the position that such an instruction was particularly important because, in her view, s. 131(1)(f) precluded Mr. Whitley from recovering *any* damages in relation to income his injuries prevented him from earning after he turned 65.

[9] Mr. Whitley took a contrary view. He argued that the *AAIA* specifically permitted the type of action he had brought and that Ms. Korvemaker had not pleaded a statutory bar defence. He contended that, properly read, the sections of the *AAIA* upon which Ms. Korvemaker relied did not preclude recovery for post-65 income loss but, rather, spoke only to how benefits and damages were to be quantified.

[10] The trial judge declined to charge the jury in the fashion that Ms. Korvemaker had urged. In fact, he did not mention the *AAIA* at all in his final instructions. The salient portions of his instructions on damages were as follows:

> Damages May Be Awarded Only Once:
>
> You should remember that under our system of law and subject to any possible appeal, this is the only occasion when Mr. Whitley may be awarded compensation. There is no continuing obligation and no subsequent proceeding may be brought to increase or decrease any award that is made.
>
> Fairness to Both Parties:
>
> The award you make must be fair to both parties. Ability to pay is not a relevant consideration. The way to achieve fairness is to assure yourselves that whatever damage or loss is asserted is both legitimate and justifiable according to the evidence you heard and received.
>
> Burden of Proving Damages:
>
> There is no reverse onus in proving damages. The burden to prove damage or loss lies with Mr. Whitley. He must prove that the amount of lost income he claims not only exists but that it occurred because of the September 9 collision. In this regard, the existence of claimable damages is closely tied to the third element in negligence, causation. Of course, the standard of proof associated with this burden is again on a balance of probabilities.
>
> Lost Income Claim:
>
> Mr. Whitley's claim for income loss is broken down into two components: 1) pretrial loss of income; and, 2) future loss of income. To assess damages for each of these components, you are called upon to decide what income Mr. Whitley received after the September 9 collision and subtract that from the income he would probably have received if the September 9 collision had not occurred. The difference between these amounts would be the amount of lost income. To determine this amount, you are required to assess two aspects of the evidence. These aspects are: 1) evidence about "what was"; and, 2) evidence about "what probably might have been". …

[11] The trial judge also reviewed the evidence relevant to the quantification of damages and instructed the jury concerning a plaintiff's duty to mitigate.

[12] Ultimately, the jury awarded Mr. Whitley damages for economic loss in the amount of $387,239.

[13] Ms. Korvemaker appeals from the decision on damages. She contends that the trial judge erred by failing to properly instruct the jury about the limited scope of a no-fault beneficiary's right to recover damages for economic loss in a tort action under the *AAIA*, and that the erroneous instruction led the jury to render a verdict that was unreasonable.

[14] For the reasons that follow, I would allow the appeal.

ISSUES AND STANDARD OF REVIEW

[15] Appellate review of a jury charge takes a functional approach in which the reviewing court asks whether the trial judge provided the jury with the tools it needed to address the issues it had to decide (*R v Abdullahi*, 2023 SCC 19 at paras 35-37; *Saskatchewan v Racette*, 2020 SKCA 2 at para 108). While appellate courts should exercise restraint and should not routinely interfere with jury verdicts, a judge's charge that fails to properly instruct the jury on a crucial point of law cannot be said to have adequately equipped the jury to carry out its task. If the charge, read as a whole, leaves the jury with an inaccurate understanding of the law, appellate intervention will be called for (*Abdullahi* at paras 32 and 38-43).

[16] Ms. Korvemaker argues that appellate intervention is necessary in this case. She submits that the verdict on damages cannot be sustained because the trial judge erred in law by not instructing the jury on the combined effect of ss. 40.1, 103 and 131(1)(f) of the *AAIA*. She contends that the lack of instruction on the applicable law left the jury improperly equipped to decide the question before it and that, if proper instruction in that regard had been provided, the jury would have been required by law to fix Mr. Whitley's damages at $0, based on the evidence adduced at trial, including the Agreed Statement of Facts.

[17] Mr. Whitley says the jury was properly instructed on the question of damages. He argues that "instructing the jury on ss. 40.1, 103, and 131 would have burdened [the jury] with deciding legal questions – beyond [its] fact-finding role – and thus would have constituted an error in law". Mr. Whitley submits that "s. 103's tort right persists for 'future' losses beyond age 65, independent of s. 131(1)(f)'s administrative cutoff", which means the trial judge was correct to not preclude the jury from considering, and awarding damages for, his proven post-65 income loss.

[18] The questions raised by the parties' submissions in this appeal may be framed as follows:

Did the trial judge err by not instructing the jury that the *AAIA* precluded Mr. Whitley from recovering damages for income loss after he turned 65; and

If the answer to the first question is "no", did the trial judge err by failing to properly instruct the jury with respect to the limited basis upon which damages for income loss can be awarded to a no-fault beneficiary under the *AAIA*?

[19] As I will discuss, the answer to the first question is dispositive of the appeal, which means the second question need not be considered.

ANALYSIS

The trial judge erred by not instructing the jury that the *AAIA* precluded Mr. Whitley from recovering damages for income loss after he turned 65

Framing the argument: a question of statutory interpretation

[20] Ms. Korvemaker asserts that the *AAIA* creates a comprehensive statutory framework that governs compensation for personal injuries resulting from automobile accidents in Saskatchewan and extinguishes an individual's right to sue for damages other than in very limited circumstances. The *AAIA* permits Part VIII no-fault beneficiaries to sue in tort only to recover damages for economic loss which, in the factual matrix of this case, means past or future income loss that exceeds the IR benefit to which they are entitled under the *AAIA*. Ms. Korvemaker submits that, because a Part VIII beneficiary's entitlement to an IR benefit ends at age 65, recovery of damages for post-65 income loss is precluded.

[21] Ms. Korvemaker says that the fact Mr. Whitley is a Part VIII beneficiary meant that the trial judge was required to instruct the jury that the *AAIA* precluded him from being able to recover damages for any post-65 income loss, and that the failure to provide such instruction was a misdirection that constitutes an error of law. Determining whether that sort of instruction was appropriate and necessary requires an interpretation of various provisions of the *AAIA*.

Principles of statutory interpretation

[22] The proper approach to any issue of statutory interpretation is the so-called modern principle articulated in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837, [1998] 1 SCR 27 (SCC), and codified in s. 2-10 of *The Legislation Act*, SS 2019, c L-10.2, which provides as follows:

> **2-10**(1) The words of an Act and regulations authorized pursuant to 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 the Legislature.
>
> (2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

[23] In *Piekut v Canada (National Revenue)*, 2025 SCC 13 [*Piekut*], Jamal J. described how the modern approach to statutory interpretation should be applied, writing as follows:

> [43] The modern principle requires a court to interpret statutory language "according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole" (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10; *R. v. Downes*, 2023 SCC 6, at para. 24). Even so, a court need not address text, context, and purpose separately or in a formulaic way, since these elements are often closely related or interdependent (*Bell ExpressVu*, at para. 31; *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84, at para. 28).
>
> [44] The modern principle reflects "the common law evolution of statutory interpretation over many centuries" (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 2.01[4]; see also S. Beaulac and P.-A. Côté, "Driedger's 'Modern Principle' at the Supreme Court of Canada: Interpretation, Justification, Legitimization" (2006), 40 *R.J.T.* 131, at pp. 141-42). It recognizes that statutory interpretation "cannot be founded on the wording of the legislation alone" (*Rizzo*, at para. 21) because "words, like people, take their colour from their surroundings" (*Bell ExpressVu*, at para. 27, quoting J. Willis, "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6). As this Court has noted, "[w]ords that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation" (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10; see also *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31; *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 23).
>
> [45] As a result, "plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms" (*Alex*, at para. 31; see also *La Presse*, at para. 23; *Vavilov*, at para. 118). At the same time, "just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretative exercise" (*Quebec (Commission des droits de la*

personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A, 2024 SCC 43, at para. 24).

[24] As noted in *Piekut*, courts must take account of a full range of contextual considerations when interpreting legislation (see also *Saskatchewan Government Insurance v Giesbrecht*, 2025 SKCA 10 at paras 36-37 [*Giesbrecht*]). However, where the statutory wording is clear and does not reveal any ambiguity, the text of the provision "usually dominates the interpretive exercise" (*R v Wolfe*, 2024 SCC 34 at para 61). A court may adopt an interpretation that modifies or departs from the ordinary meaning of the statutory text in some circumstances, but the ordinary meaning should prevail unless there is a reason to reject it based on contextual considerations that are sufficient to justify such a departure (*Oladipo v The College of Physicians and Surgeons for Saskatchewan*, 2024 SKCA 94 at para 36; *Hess v Thomas Estate*, 2019 SKCA 26 at para 51; *Ballantyne v Saskatchewan Government Insurance*, 2015 SKCA 38 at para 20).

[25] The modern principle also emphasizes the importance of a purposive analysis in statutory interpretation. All legislation is presumed to have a purpose which courts should strive to discover and give effect to through the interpretive process. Interpretations that are consistent with legislative purpose should be adopted, while those that defeat or undermine legislative purpose should be avoided (*Regina Bypass Design Builders v Supreme Steel LP*, 2021 SKCA 82 at para 27, citing R. Sullivan, *Sullivan on the Construction of Statutes*, 7th ed (LexisNexis, 2022) at s. 9.3 [*Sullivan*]; see also *Farm Credit Canada v Gustafson*, 2021 SKCA 38 at para 58). The search for purpose, however, must not overwhelm the interpretive exercise; a court cannot "ignore the words of the statute to achieve what it considers to be a more sensible result" (*Kennedy v Carry the Kettle First Nation*, 2020 SKCA 32 at para 27). The goal of statutory interpretation is to "find harmony between the words of the statute and the intended objective, not to achieve the objective 'at all costs'" (*R v Breault*, 2023 SCC 9 at para 26, citing *MediaQMI inc. v Kamel*, 2021 SCC 23 at para 39, and *Sun Indalex Finance, LLC v United Steelworkers*, 2023 SCC 6 at para 174).

[26] Let me turn now to examine the *AAIA* provisions at issue in this appeal through the foregoing framework.

Applying the principles

1. The scheme and object of the *AAIA*

[27] To analyse Ms. Korvemaker's arguments, it is helpful to set out the relevant provisions of the *AAIA*, and to understand the nature and object of the statutory structure of which they are a part.

[28] The insurance coverage scheme implemented in Saskatchewan by the *AAIA* is unique, in that it permits persons who are licenced as drivers to choose between two injury plans. A person who makes no election (or who makes a no-fault election) is generally entitled to more generous and immediate benefits if they are injured in an automobile accident, but has only a limited right to sue in tort. A person who makes a tort election has less generous defined benefits under the *AAIA* but retains the right to sue in tort for a wider spectrum of damages. No other province in Canada has an automobile accident insurance scheme that operates the same way.

[29] Prior to 1994, the *AAIA* did not bar an insured person who had been injured in an automobile accident from pursuing a common law cause of action against a negligent driver or against a negligent third party. However, under this tort system, "[t]he determination of liability for an injury, or the quantum of damages to which the injured insured was entitled, often involved protracted and sometimes costly litigation" (*Cebryk v Paragon Enterprises (1984) Ltd. (Armstrong's Physiotherapy Clinic)*, 2010 SKCA 146 at para 8 [*Cebryk*]). Concerns about the costs and delays inherent in litigation, as well as concerns for the quality and timeliness of rehabilitative and treatment services available to those persons injured in automobile accidents, led to the enactment of *The Automobile Accident Insurance Amendment Act, 1994*, SS 1994, c C-34 [*1994 Amendment*], which implemented Saskatchewan's modified no-fault insurance system and greatly curtailed individual parties' rights to pursue litigation to recover damages, as Klebuc C.J.S. observed in *Acton v Rural Municipality of Brittania No 502*, 2012 SKCA 127 [*Acton*]:

> [19] The no-fault provisions of the *AAIA* came into force by way of *The Automobile Accident Insurance Amendment Act*, S.S. 1994, c. 34 (the "*1994 Amendment*"). Its declared and otherwise obvious purpose was to implement a modified no-fault insurance scheme. It is considered to be "modified no-fault" because it is designed to provide a person injured in a motor vehicle accident with

> immediate access to a broad range of benefits without regard to who was at fault, while preserving the right of an injured insured to bring an action to recover damages for specific economic losses. The modified no-fault scheme also sought to avoid costly court proceedings associated with proving causation and establishing the level of compensation to which an injured insured or third party was entitled. (See: Saskatchewan, Legislative Assembly, *Official Report of Debates (Hansard)*, (18 April 1994) at 1615-1616.) These objectives were implemented by way of ss. 102, 103(1) and 103(2) of the *1994 Amendment*.
>
> [20] Section 102 of the *1994 Amendment* (now s. 40.1) extinguished an injured insured's common law right to sue to recover non-pecuniary damages and pecuniary damages from the person who negligently caused the insured's injuries, other than for pecuniary damages to the extent permitted by s. 103(1) and s. 103(2). …

[30] The original no-fault scheme implemented under the *1994 Amendment* encountered "considerable criticism" (*Cebryk* at para 11), as many viewed the modified no-fault system as placing too much power in the hands of the insurer and as depriving those who were injured in accidents of an adequate opportunity to pursue compensation. The *1994 Amendment* contained a built-in review provision to address such concerns. That review provision required the Lieutenant Governor in Council to appoint an independent committee within five years of the *1994 Amendment* coming into force, to "review and report to the Lieutenant Governor in Council on all matters concerning [Part VIII of the *AAIA*] and the administration of [Part VIII] and the regulations made pursuant to [Part VIII]" (*1994 Amendment*, s. 220(5)).

[31] In accordance with s. 220(5), the Lieutenant Governor in Council appointed the Personal Injury Protection Plan Review Committee [Review Committee] in 2000 and tasked it with conducting a complete review of Part VIII of the *AAIA*, and with considering whether and when tort actions for damages should be available to injured persons. The Review Committee issued its *Final Report* in December of 2000 [*Report*], which contained a wide range of recommendations for improving the Personal Injury Protection Plan provisions of the *AAIA*. This led to the enactment of *The Automobile Accident Insurance Amendment Act, 2002*, SS 2002, c 44, s 13 [*2002 Amendment*], which made several significant changes to the *AAIA* scheme, including permitting "an insured the choice of either no-fault coverage or tort based coverage" (*Cebryk* at para 11). The *Report* played a significant role in this legislative process, as many of its recommendations were adopted.

[32] During the legislative debates that preceded the *2002 Amendment*, the Honourable Maynard Sonntag, then Minister for Saskatchewan Government Insurance, gave the following description of the Government's approach and its underlying purpose in implementing the *Report*'s recommendations (Saskatchewan, Legislative Assembly, *Debates (Hansard)*, 24th Leg, 2nd Sess (3 July 2001) at pp 2256-2257):

> We have received some 111 recommendations. We will continue to work through them, Mr. Speaker, to try to find, Mr. Speaker, the best possible plan for the people of Saskatchewan and those that purchase Saskatchewan government insurance, Mr. Speaker, taking into account first of all, of course, the pricing. We want to ensure that people are able to buy insurance at a fair and reasonable rate. And we want to ensure that people have the best possible coverage as well, Mr. Speaker.
>
> …
>
> Again, we have many recommendations put forward by the review committee. We continue to work through those in attempt . . . in an attempt, I should say, to strike a balance between cost, Mr. Speaker, and adequate and good coverage for the people of Saskatchewan.

[33] Later, during second reading of the Bill that became the *2002 Amendment*, the Honourable Mr. Sonntag described what the Government hoped to accomplish through the proposed amendments to the *AAIA*. In that regard, he reiterated that the *AAIA*'s primary purpose was to "provide basic auto insurance coverage for all Saskatchewan drivers at very affordable rates" (Saskatchewan, Legislative Assembly, *Debates (Hansard)*, 24th Leg, 3rd Sess (7 June 2002) at p 1894). He also stated that, while the Review Committee had concluded that "the basic principles, benefits, and administration of the [Personal Injury Protection Program under the *AAIA*] are sound and should be continued", amendments were necessary to "provide improved benefits and service, and [an] enhanced role for tort law" (at p 1895). The Honourable Mr. Sonntag went on to explain that implementing the proposed *2002 Amendment* would "ensure that no-fault insurance continues to meet its goals – that is to provide among the best injury benefits in Canada at very affordable rates for Saskatchewan residents", while also "better meet[ing] the needs of those who are injured in auto crashes" (at p 1896).

2. The relevant provisions of the *AAIA*

[34] The *AAIA* provisions referred to in this portion of my reasons are those that existed in 2010, when Mr. Whitley's injuries were sustained. Several of those provisions were

introduced as part of the *2002 Amendment*. Some of them have since been repealed or amended. I will set out those that are relevant to the circumstances of this case.

[35] Section 2 of the *AAIA* defines many of the Act's key terms, including the following:

> **Interpretation of Act**
>
> **2**(1) In this Act:
>
> …
>
> (d) "**beneficiary**" means a person who applies for and is entitled to receive benefits;
>
> (e) "**benefits**" means, except when used in reference to benefits payable pursuant to another Act or any legislation of another jurisdiction, any benefits payable pursuant to Part II or VIII
>
> …
>
> (v) "**insured**" means:
>
> > (i) a person to whom or with respect to whom benefits are payable pursuant to Part VIII;
> >
> > …
>
> …
>
> (ff.1) "**Part VIII beneficiary**" means any person who, if he or she were to sustain a bodily injury caused by a motor vehicle arising out of an accident, would be entitled to benefits pursuant to Part VIII and includes any Saskatchewan resident with respect to whom the insurer has not received a tort election, but does not include a person receiving a benefit pursuant to Part II in relation to the death of an insured;
>
> …
>
> (ss.1) "**tort election**" means a written election made by a Saskatchewan resident that complies with the requirements of Part IV;

[36] As mentioned above, the no-fault provisions of the *AAIA* came into force through the enactment of the *1994 Amendment*, which created a modified no-fault insurance scheme that provided beneficiaries injured in motor vehicle accidents with immediate access to a broad range of benefits without regard to who was at fault.

[37] The *AAIA*'s modified no-fault scheme entirely extinguished a person's right to sue in tort to recover damages from a driver who negligently caused them injuries, except in certain limited and defined circumstances (*Germain v Saskatchewan Government Insurance*, 2015 SKCA 84 at para 26; *Thomas v Quinlan*, 2020 SKCA 82 at para 4 [*Thomas*]). The amendments brought into force by the *2002 Amendment* permitted persons

to make a tort election, and to thereby opt out of the no-fault benefit provisions of the legislation and preserve their ability to bring a tort action if they were injured in an automobile accident.

[38] In that regard, Part IV of the *AAIA* bears the heading "Bodily Injury and Property Damage Liability". Division 2 of Part IV is titled "Limits on Actions and Tort Election". That Division contains a general prohibition against tort actions by no-fault beneficiaries (s. 40.1), and the tort election provision (s. 40.2). Those sections read, in relevant part, as follows:

> **Actions for bodily injury prohibited**
>
> **40.1** Notwithstanding any other Act or law but subject to this Part and Part VIII:
>
> > (a) no person has any right of action respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force; and
> >
> > (b) no action or proceeding lies or may be commenced in any court respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force.
>
> **Tort election**
>
> **40.2**(1) A Saskatchewan resident may provide the insurer with a tort election that sets out that resident's intention to:
>
> > (a) elect to obtain coverage pursuant to Part II;
> >
> > (b) waive the resident's right to obtain benefits pursuant to Part VIII; and
> >
> > (c) elect to bring an action for loss or damage for bodily injury caused by a motor vehicle arising out of an accident.
>
> (2) Every Saskatchewan resident who wishes to make a tort election shall serve on the insurer a completed tort election form in accordance with section 40.3.
>
> (3) A tort election applies only with respect to accidents that occur after the date the insurer receives the tort election.
>
> (4) Notwithstanding section 40.1 but subject to sections 41 and 41.1 of this Act and section 43 of *The Workers' Compensation Act, 2013*, a tort election received by the insurer entitles the person named in it to bring an action for loss or damage respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident.

[39] Part VIII of the *AAIA* bears the title "Bodily Injury Benefits (No Fault)". At the time of the accident in September of 2010, s. 100 defined certain terms for the purposes of Part VIII, including the following:

> **Interpretation of Part**

100 In this Part:

…

(e) **"income replacement benefit"** means an income replacement benefit payable pursuant to Division 4;

…

(q) **"yearly employment income"**, with respect to an insured, means the yearly employment income of the insured that the insurer uses to determine benefits pursuant to Division 4.

[40] Section 101(1.1) stated that Part VIII "applies to any person who sustained bodily injury caused by a motor vehicle arising out of an accident … who has not provided the insurer with a tort election in the manner prescribed by Part IV".

[41] Section 103, as it existed in 2010, set out one of the exceptions to the s. 40.1 general prohibition against tort actions by no-fault beneficiaries. It permits insured persons who had not made a tort election to bring an action to recover damages for specifically defined forms of economic loss. The portions of s. 103 relevant to the matter at hand read as follows:

Tort actions for economic loss

103(1) In this Part:

(a) "**economic loss**" means the following losses resulting from bodily injury caused by a motor vehicle that arise out of an accident:

(i) in the case of an insured who is entitled to a benefit pursuant to Division 4:

(A) any past or future income loss suffered by the insured in excess of the yearly employment income attributable to the insured pursuant to Division 4;

(B) if the insured receives a benefit pursuant to section 117, 118, 119 or 120, any past or future income loss suffered by the insured in excess of the benefit provided;

(ii) in the case of an insured who dies as a result of an accident, any past income loss or funeral expenses suffered by the insured's surviving spouse or any dependant in excess of the benefits provided pursuant to Division 5;

(iii) in the case of an insured who is entitled to any benefit pursuant to Divisions 3 and 7, any past and future loss suffered by the insured in excess of the benefits to which the insured is entitled;

(iv) in the case of an insured who is entitled to compensation for loss of earnings pursuant to *The Workers' Compensation Act, 1979* or any other

Act, or any legislation of any other jurisdiction, that relates to the compensation of individuals injured in accidents:

(A) any past or future income loss suffered by the insured in excess of the benefits paid pursuant to sections 38 and 38.1 of *The Workers' Compensation Act, 1979*, section 207 of this Act or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for income loss of individuals injured in accidents;

(B) any past and future loss suffered by the insured's surviving spouse or dependant in excess of the benefits paid pursuant to sections 82, 83, 85, 87, 88 and 89 of *The Workers' Compensation Act, 1979*, section 207 of this Act or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals for the death of an individual in an accident; or

(C) any past and future loss suffered by the insured in excess of the benefits paid pursuant to sections 106, 108, 113 and 115 of *The Workers' Compensation Act, 1979* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for medical aid of individuals injured in accidents;

(b) "**insured**" includes any prescribed person or class of prescribed persons.

(2) Notwithstanding section 40.1 of this Act, but subject to section 44 of *The Workers' Compensation Act, 1979*, an action may be brought in the Court of Queen's Bench to recover any damages of the insured or of the insured's surviving spouse or dependant for economic losses.

[42] As can be seen, s. 103(2) permits no-fault beneficiaries, or their surviving spouses or dependants, to recover damages for *economic losses*. Section 103(1)(a) defines four categories of what may amount to "economic loss" and, thus, permit an action for damages under s. 103(2).

[43] Section 104 of the *AAIA* sets out the other exception to the prohibition against tort actions by no-fault beneficiaries. It allows those persons to sue to recover damages for "non-economic loss" (i.e., pain and suffering) against drivers who have caused them injury through criminal driving acts, or against various other third parties whose negligence played a sufficiently causative role in relation to the injuries (i.e., vehicle manufacturers, vehicle part makers and suppliers, vehicle sellers, vehicle repairers, and owners of licenced restaurants and taverns). Section 104 has no application to Mr. Whitley's case.

[44] Division 4 of Part VIII bears the title "Income Replacement Benefits", which is what the phrase "benefit pursuant to Division 4" in s. 103(1)(a)(i) refers to. Section 113 sets out the circumstances under which a Part VIII beneficiary is entitled to an IR benefit, and how the insurer (SGI) calculates the IR benefit. That section read, in relevant part, as follows in 2010:

> **Income replacement benefit**
>
> **113**(2) An insured is entitled to an income replacement benefit if, as a result of an accident, the insured:
>
> > (a) is unable to continue an employment held by the insured at the date of the accident;
> >
> > (b) is unable to hold an employment he or she would have held in the first 180-day period following the accident if the accident had not occurred; or
> >
> > (c) is deprived of benefits pursuant to the *Employment Insurance Act (Canada)* or any other prescribed benefits to which he or she was entitled at the date of the accident.
>
> (3) The insurer shall calculate the income replacement benefit for the employment that the insured is unable to continue on the following basis:
>
> > (a) if the insured holds employment in the employ of another, the yearly employment income of the insured calculated on the basis of the income the insured earned or would have earned from all employments the insured held or would have held but for the accident in the first 180-day period after the accident;
> >
> > …
> >
> > (c) subject to the regulations, any benefits the insured would have received from the *Employment Insurance Act (Canada)* or any other prescribed benefits in the first 180-day period after the accident.
>
> (4) On and after the 181st day after the accident, an insured is entitled to an income replacement benefit if the insured is unable to hold employment he or she held or would have held but for the accident.
>
> (5) An income replacement benefit pursuant to subsection (4) is to be the greatest of:
>
> > (a) an income replacement benefit calculated on the basis of the yearly employment income attributed to the insured in the first 180-day period after the accident;
> >
> > (b) an income replacement benefit calculated on the basis of the average employment income the insured earned in the two years before the accident as set out in the regulations, including any benefits received pursuant to the *Employment Insurance Act (Canada)*, employment disability plan, and *Workers' Compensation Act, 1979* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals injured in accidents; and

> (c) an income replacement benefit employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to *The Labour Standards Act*.

[45] The formula for calculating the "yearly employment income attributed to the insured" is set out in *The Personal Injury Benefits Regulations*, RRS c A-35 Reg 3.

[46] Section 127 of the *AAIA* speaks to a Part VIII beneficiary's entitlement to an IR benefit where they suffer an injury between the ages of 63 and 65, or if they suffer injury after turning 65, while still employed. In 2010, it read as follows, in relevant part:

> **Insureds near 65 years or older**
>
> **127**(1) In this section, "income benefit" means a benefit pursuant to section 113
> …
>
> …
>
> (2) This section applies only if an insured is 63 years of age or more and not more than 65 years of age at the date of the accident with respect to which an income benefit is payable.
>
> (3) Notwithstanding any other provision of this Part, if an insured is entitled to receive an income benefit pursuant to this Division and, while that insured is receiving the income benefit, that person reaches 65 years of age, the insurer:
>
> > (a) shall not terminate or reduce that insured's income benefit solely on the grounds that the insured has reached 65 years of age; and
> >
> > (b) unless the insurer is otherwise entitled pursuant to this Part or the regulations to terminate or reduce the insured's income benefit, shall pay the income benefit to the insured for a period of at least 24 consecutive months after the date the insured first became entitled to the income benefit.
>
> (4) Notwithstanding any provision of this Part, an insured who is 65 years of age or older at the date of the accident is not entitled to income benefits unless that person was employed at the date of the accident.
>
> (5) The insurer shall reduce an income benefit to an insured who is 65 years of age or older at the date of the accident:
>
> > (a) by 25% for the second year following the date of the accident;
> >
> > (b) by 50% for the third year following the date of the accident; and
> >
> > (c) by 75% for the fourth year following the date of the accident.
>
> (6) An insured mentioned in subsection (5) ceases to be entitled to income benefits four years after the date of the accident.

[47] Section 128 provides for payment of a lump sum benefit to a Part VIII beneficiary who has been receiving an IR benefit, when they turn 65. It states:

> **Lump sum benefit**

128(1) If an income replacement benefit or a substitute worker benefit is paid to an insured for the prescribed period, the insurer shall provide a lump sum benefit to the insured when:

(a) the insured reaches 65 years of age; or

(b) the insured's entitlement to an income replacement benefit or a substitute worker benefit is terminated.

(2) The insurer shall calculate the lump sum benefit pursuant to this section in accordance with the regulations.

(3) An insured is not entitled to a lump sum benefit pursuant to this section if the insured is 65 years of age or older at the date of the accident.

[48] Section 131 bears the heading "TERMINATION OF DIVISION 4 BENEFITS", and enumerates a list of circumstances, the occurrence of any of which terminates a Part VIII beneficiary's entitlement to Division 4 benefits. It reads as follows:

Termination of benefits

131(1) Notwithstanding any other provision of this Part, an insured ceases to be entitled to a benefit pursuant to this Division when any of the following occurs:

(a) the insured is able to hold the last employment that he or she held before receiving a benefit;

(b) in the case of an insured who was not employed at the date of the accident but who had displayed an intention of obtaining employment at the date of the accident, the insured is able to hold the employment he or she could have held at the date of the accident;

(c) in the case of an insured who was not employed at the date of the accident and had not displayed any intention of obtaining employment at the date of the accident, the insured has substantially returned to the activities of daily living;

(d) the insured is able to hold an employment determined for him or her pursuant to subsection 119(4);

(e) the insured holds an employment from which the yearly employment income is equal to or greater than the yearly employment income on which the benefit is calculated;

(f) subject to section 127, the insured is 65 years of age or older;

(g) the insured does not make himself or herself available for employment;

(h) the insured is able to hold an employment the insured held or would have held at the date of the accident but declines a bona fide offer of employment that, in the opinion of the insurer, the insured is capable of holding; or

(i) the insured dies.

(Emphasis added)

[49] As set out above, Ms. Korvemaker takes the position that the combined effect of ss. 40.1, 103 and 131(1)(f) of the *AAIA* is to bar recovery of damages for economic loss in relation to income that a Part VIII beneficiary would have earned after reaching age 65. She says that no-fault beneficiaries are only entitled to bring an action for damages in the specific and limited circumstances defined in the *AAIA*. She argues that, by virtue of s. 103(1)(a)(i), a Part VIII beneficiary cannot maintain an action unless they are *entitled to a benefit* under Division 4 and, because s. 131(1)(f) terminates entitlement to benefits upon that person reaching the age of 65, no damages for income loss after that point are recoverable.

3. The grammatical and ordinary sense of the words support Ms. Korvemaker's position

[50] I have set out several sections of the *AAIA* in the foregoing paragraphs to illustrate the legislative setting in which the provisions implicated by Ms. Korvemaker's primary submission reside. In my view, the grammatical and ordinary sense of the words used in ss. 40.1, 103, and 131(1)(f) supports the interpretation for which she advocates.

[51] The ordinary meaning of a statutory provision is "the natural meaning which appears when the provision is simply read through as a whole" (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 89, citing *Canadian Pacific Air Lines Ltd. v Canadian Air Lines Pilots Association.*, 1993 CanLII 31, [1993] 3 SCR 724 at p 735 (SCC)).

[52] Beginning with s. 40.1(a), it provides that "*Notwithstanding* any other Act or law *but subject to* this Part and Part VIII … no person has any right of action respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident" (emphasis added). The grammatical and ordinary meaning of that wording is clear: despite any other statute or law, tort actions in relation to bodily injuries resulting from motor vehicle accidents are not permitted, except as set out in Part IV and Part VIII of the *AAIA*.

[53] Part IV of the *AAIA* permits a Saskatchewan resident to bring an action in respect of injuries caused by a motor vehicle accident where that person has made a tort election,

in accordance with s. 40.2. Mr. Whitley did not make such an election and, as such, Part IV did not provide him with a right of action. This means Mr. Whitley's right of action could only be found to exist in Part VIII which, by virtue of s. 101(1.1), applies to "any person who sustained bodily injury caused by a motor vehicle arising out of an accident … and who has not provided the insurer with a tort election in the manner prescribed in Part IV".

[54] As set out above, in 2010, absent a tort election by the injured person, the *AAIA* permitted only two exceptions to the s. 40.1 prohibition against tort actions: actions to recover damages for economic loss (s. 103(2)), and actions to recover damages for non-economic loss (s. 104). Only s. 103(2) is engaged by this appeal. At the relevant time, the right of action in s. 103(2) was circumscribed by s. 103(1)(a), which defined the term "economic loss" as being applicable to four specific classes of persons:

"an insured who is entitled to [an IR benefit]" – s. 103(a)(i);

"an insured who dies as a result of an accident" – s. 103(1)(a)(ii);

"an insured who is entitled to any benefit pursuant to Divisions 3 and 7" (i.e., rehabilitation expenses or living assistance expenses) – s. 103(1)(a)(iii); and

"an insured who is entitled to compensation for loss pursuant to *The Workers Compensation Act, 1979*" or other similar legislation – s. 103(1)(a)(iv).

[55] The *AAIA* clearly sets out, in the foregoing provisions, who can bring an action for economic loss without having made a tort election. The Legislature's choice to define the term "economic loss" in s. 103(1)(a), and to limit its operation to four specific classes of insured persons is significant, because a statutory definition of that sort narrows the meaning that may be ascribed to a term in the interpretive exercise. Where the legislation defines a term, it is not open to a court to deviate from that definition (*Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 46). By choosing to define only four categories of economic loss in the *AAIA*, the Legislature can be taken as having determined that, if the insured person's loss does not fit into one of those four definitions, an action for damages for economic loss is precluded. Notably, in relation to three of the

four categories (including the one applicable to Mr. Whitley's claim), the term "economic loss" is defined as encompassing only losses suffered by an insured who is entitled to a specified type of benefit or compensation.

[56] In Mr. Whitley's case, the definition of economic loss that is relevant to the matter at hand is s. 103(1)(a)(i)(A), which permits "an insured who is *entitled to a benefit* pursuant to Division 4" to recover "any past or future income loss suffered … in excess of the yearly employment income attributable" to them (emphasis added). The emphasized words are important here. In its grammatical and ordinary sense, the word "entitled" means "having a legal right or just claim to do, receive or possess something" (*Oxford English Dictionary Online*). In *Acton*, this Court held that the phrase "benefits to which the insured is entitled" meant "benefits which the insured has a right to collect from the Insurer" (at para 51; see also *Harding v Saskatchewan Government Insurance*, 2014 SKQB 228 at para 17 [*Harding v SGI*]). In the present context, that means a no-fault beneficiary's right to bring a tort action is contingent upon them having an existing legal right to receive an IR benefit under Division 4 because, where an insured is not entitled to receive (or has no legal right to receive) an IR benefit under Division 4, their past and/or future income loss does not fit within the definition of "economic loss" in s. 103(1)(a)(i)(A).

[57] Section 131(1) defines when an insured person's entitlement to benefits under Division 4 of Part VIII ends. It begins with the words "Notwithstanding any other provision of this Part, an insured ceases to be entitled to a benefit pursuant to this Division when any of the following occurs". Again, the grammatical and ordinary sense of this language is unambiguous, and provides that, despite anything else that may appear in Part VIII of the *AAIA*, the occurrence of any one of the enumerated events terminates a no-fault beneficiary's entitlement to an IR benefit. In subsection (f), s. 131(1) provides that the insured attaining the age of 65 is such an event, "subject to section 127". Section 127 applies only in limited circumstances, creating a specific entitlement to benefits for an insured person who is between the ages of 63 and 65 at the time of the accident that causes injury (ss. 127(2) and (3)), or for a person who is already age 65 or older *and* still working when the accident occurs (ss. 127(4) – (6)). Section 127 does not apply to Mr. Whitley; he was 58 years old when he suffered his injuries.

[58] Since s. 127 has no application to Mr. Whitley's situation, the grammatical and ordinary sense of the wording in ss. 40.1, 103(1)(a)(i)(A), 103(2), and s. 131(1)(f) of the *AAIA* supports a conclusion that a person in his position could not, at law, recover damages for post-age-65 income loss.

[59] As Mr. Whitley did not make a tort election, the *AAIA* permitted him to bring an action only in the specific circumstances enumerated in Part VIII, which, in his case, was for economic loss defined in s. 103(1)(a), i.e., past or future income loss suffered by "an insured who is entitled to a benefit pursuant to Division 4".

[60] Mr. Whitley was entitled to receive a benefit under Division 4 when the accident that caused his injuries occurred, and he remained entitled to receive that benefit until he reached the age of 65 (notably, the evidence at trial showed that Mr. Whitley did not suffer any "economic loss" prior to age 65, as he had been fully compensated for any income loss he experienced, through a combination of the Division 4 benefits to which he was entitled and payments made to him under an SGI Canada top-up policy). However, when Mr. Whitley turned 65, he was no longer a person "entitled to a benefit pursuant to Division 4", which meant that any income loss he experienced after that time was not "economic loss" within the meaning of s. 103(1)(a)(i)(A).

4. Contextual considerations do not warrant deviation from the grammatical and ordinary meaning of the statutory language

[61] As set out above, statutory interpretation begins with ordinary meaning but does not stop there; context and purpose must also be considered (*Giesbrecht* at para 37). The modern principle requires a court to "harmonize the grammatical meaning of the text with the other indicators of legislative intent gleaned from reading the text in its entire context" (*Acton* at para 17). Legislative intention "is discovered by looking at the words of the provision, informed by its history, context and purpose" (*R v Mabior*, 2012 SCC 47 at para 20; see also *R v Alex*, 2017 SCC 37 at paras 31-32).

[62] As I will discuss, the relevant contextual considerations in this case provide no basis to depart from the ordinary meaning of the statutory language. The scheme and object of

the *AAIA*, the legislative history that led to the modified no-fault system and the tort action exception, the jurisprudential treatment of related provisions, and the application of other interpretive principles all reinforce the conclusion that the grammatical and ordinary meaning of the provisions at issue aligns with the Legislature's purpose in providing only a limited scope of recovery in tort actions for Part VIII beneficiaries.

The relevant legislative history

[63] As mentioned above, the legislative history that led to the *2002 Amendment* was significantly influenced by the *Report*. One of the recommendations that the Review Committee made in the *Report* pertained to the exception provisions permitting tort actions for income loss. Prior to the *2002 Amendment*, s. 103(1)(a) defined "economic loss", as it related to loss of the ability to earn income, as follows:

> **103**(1) In this section, '**economic loss**' means the following losses resulting from bodily injuries caused by an automobile arising out of an accident:
>
> > (a) in the case of a victim who is entitled to an income replacement benefit, any actual income loss suffered by the victim in excess of the maximum yearly insurable earnings calculated pursuant to section 138;

[64] When the Review Committee was conducting its review, the "maximum yearly insurable earnings" referred to in s. 103(1)(a) was fixed at $56,855. This meant that, in effect, an insured who earned less than that amount would never be able to sue for lost income under the *1994 Amendment*, regardless of whether the IR benefit provided by the insurer adequately compensated the loss of income they actually experienced. In the *Report*, the Review Committee observed that this led to an inequitable gap in relation to the recovery of lost income, "because if the injured person was not entitled to an [IR benefit] which reflects actual income loss, he or she may suffer a substantial loss between what was covered by the no-fault [IR benefit] and $56,855 per year" (at p 58). As a result, the Review Committee recommended that the right to bring tort actions for "economic loss in excess of benefits be retained" and that tort actions for economic loss "be extended to cover all economic loss in excess of the benefits" available to an insured under the *AAIA* (*Report* at p 57; see also *Acton* at para 24).

[65] The Legislature incorporated the Review Committee's recommendation, and enacted s. 103(1)(a)(i)(A) in the *2002 Amendment*, as noted in *Acton*:

> [28] Section 103(1)(a)(i)(A) incorporated the recommendation of the Review Committee by enabling an insured to sue to recover damages for "any past or future income loss suffered ... in excess of the yearly employment income attributable to the insured pursuant to Division 4". Division 4 in turn requires the Insurer to calculate the insured's yearly employment income based on what the insured earned or would have earned but for the injuries suffered in an accident. Consequently, an insured is entitled to sue to recover the "gap" between his actual loss and the amount recovered or recoverable from the Insurer without regard to the cap which limited the Insurer's obligation to pay income replacement benefits.

[66] Along with enhancing the ability to sue for an amount that reflected an insured person's true loss of income, the Review Committee also recommended that the Legislature introduce an age-related limitation to IR benefits. At the time, the *AAIA* contained no equivalent to s. 131(1)(f). Under s. 129 of the *1994 Amendment*, the occurrences that would terminate an injured person's entitlement to an IR benefit were stated, in relevant part, as follows:

> **Termination of income replacement benefit**
>
> **129**(1) Notwithstanding any other provision of this Division, a victim ceases to be entitled to an income replacement benefit when any of the following occurs:
>
> (a) the victim is able to hold the employment that he or she held at the time of the accident;
>
> (b) the victim is able to hold the more remunerative employment mentioned in section 113;
>
> (c) the victim is able to hold an employment determined for the victim pursuant to section 131;
>
> (d) one year has expired from the day the victim is able to hold an employment determined for the victim pursuant to section 132 or 133;
>
> (e) the victim holds an employment from which the gross yearly employment income is equal to or greater than the gross yearly employment income on which victim's income replacement benefit is calculated;
>
> …
>
> (g) the victim dies.

[67] As can be seen, none of the foregoing determiners of entitlement in s. 129 of the *1994 Amendment* related to the insured's age. Recognizing that persons "may, in fact, choose to remain employed after age 65", the Review Committee "agreed that the income replacement benefit should be stepped down after that time" (*Report* at p 105). It recommended that an IR benefit be paid for an insured person over age 65 *only* if that person held employment at the time of the accident that caused their injuries, and that for

such a person the IR benefit be "stepped down over the next four years to age 69" (at p 105). Those recommendations were incorporated in ss. 127 and 128 of the *2002 Amendment.*

[68] The *2002 Amendment* also made other changes with respect to the circumstances that terminate a Part VIII beneficiary's entitlement to IR benefits, in s. 131. For the most part, s. 131 of the *2002 Amendment* mirrored s. 129 of the *1994 Amendment*, basing termination of entitlement to IR benefits on an insured person's ability to return to sufficiently remunerative employment. However, s. 131(1)(f) of the *2002 Amendment* added a terminating event that was not contained in the *1994 Amendment*, namely, the insured person reaching the age of 65. For ease of reference, I will reproduce s. 131(1)(f) here:

> **Termination of benefits**
> **131**(1) Notwithstanding any other provision of this Part, an insured ceases to be entitled to a benefit pursuant to this Division when any of the following occurs:
>
> …
>
> (f) subject to section 127, the insured is 65 years of age or older;

[69] Bringing all of this back to the consideration of legislative history as a contextual factor in the interpretive process, it must be observed that there is nothing in either the *Report* or the Legislative debates that speaks specifically to how a provision terminating entitlement to benefits at age 65 in the *2002 Amendment* came about. However, I also see nothing in either of those sources that gives rise to a contextual reason to depart from the ordinary grammatical meaning of ss. 40.1, 103(1)(a)(i)(A) or 131(1)(f). The ordinary grammatical meaning of the statutory text in those sections is consistent with the expressed legislative objectives of enhancing the ability of persons to bring a tort action to recover benefits, "stepping down" benefits for persons who reach the age of 65, and striking an appropriate balance between costs and coverage for a public insurer.

The treatment of related provisions in the jurisprudence

[70] Section 131(1)(f) has received little comment in the jurisprudence. However, the meaning of the phrase "ceases to be entitled" in s. 131 has been considered in several decisions. In *Murphy v Saskatchewan Government Insurance*, 2008 SKCA 57, for

example, this Court held that "ceases to be entitled" (at para 22) should be interpreted in a fashion consistent with the grammatical and ordinary sense of the words, which means that, upon any of the enumerated requirements in the section being met, "an insured's entitlement to IR Benefits terminates" (at para 29). This is consistent with an interpretation that an insured's entitlement to benefits under Division 4 of Part VIII ends when they reach the age of 65 and provides no basis to depart from the ordinary and grammatical meaning of the words. See also *Cass v Saskatchewan Government Insurance*, 2021 SKCA 130 at para 51.

[71] Other relevant language in ss. 40.1, 103 and 131 has been consistently interpreted by Courts in this province in a fashion that aligns with its grammatical and ordinary meaning.

[72] In that regard, Courts have repeatedly held that the *AAIA* bars the commencement of any action in relation to injuries arising from automobile accidents, apart from those specifically permitted by the Act (*Cebryk* at para 54; *Thomas* at para 4; see also: *Hill v Saskatchewan Government Insurance*, 2008 SKQB 426 at paras 11-21; *Penzie v Pfeifer*, 2011 SKQB 1 at para 34; *Harding v Skopyk*, 2014 SKQB 104 at paras 24-25; *Re Weisbeck*, 2018 SKQB 60 at para 47; *Bearboy v Hardy*, 2021 SKQB 118 at paras 11-14 [*Bearboy*]; *Howarth v Leer*, 2023 SKKB 109 at para 41 [*Howarth*]; and *Johnson v Witchekan*, 2024 SKKB 179 at paras 46-48).

[73] The phrase "entitled to a benefit", which appears in s. 103(1) and in s. 131(1), has been interpreted as meaning a benefit which the insured has a right to collect from the insurer (*Acton* at para 52; *Harding v SGI* at para 17). Courts in this province have also consistently held that the right to bring an action under s. 103 is not itself a *benefit*; s. 103 merely identifies a particular and limited right of action, which is contingent on the *entitlement* to a benefit (*Harding v SGI* at paras 26-30; *Howarth* at para 33).

[74] Courts have interpreted the related exception in s. 104 in a fashion that adheres to the grammatical and ordinary meaning of the statutory language as well. In that respect, several decisions have held that a tort action for non-economic loss against the driver of a motor vehicle alleged to have caused injury through criminal driving actions can be

maintained *only* if the driver was convicted of an offence enumerated in s. 104(2)(a)(i); or in the circumstances described in s. 104(2)(a)(ii) (see: *Bacik v Vitalaire Canada Inc.*, 2018 SKQB 71 at paras 9-23; *Bearboy* at paras 11-18; and *Gran v Nakonechny*, 2021 SKQB 288 at paras 28, 36-42, and 48-60). In each of *Bacik*, *Bearboy* and *Gran*, judges specifically rejected arguments that the clear wording of the statute should give way to a broader interpretation based on a purported legislative purpose of increasing the availability of recovery in tort for Part VIII beneficiaries.

[75] In short, the jurisprudential treatment of the relevant provisions as a whole also favours an interpretation that is consistent with the grammatical and ordinary sense of the statutory text.

Other interpretive principles support an interpretation that conforms to the grammatical and ordinary meaning of the statutory language

[76] In my view, other applicable principles of statutory interpretation also support a plain language construction of the *AAIA* provisions at issue in this case.

[77] One such principle assumes that "the legislature is competent and well informed, that language is used consistently, that tautology is avoided, [and] that the provisions of an Act all fit together to form a coherent and workable scheme" (*Sullivan* at s. 13.02).

[78] As it relates to consistent use of language, it must be presumed that the Legislature intended the phrase "entitled to a benefit" to bear the same meaning in respect of both s. 103(1)(a)(i) and s. 131(1). In other words, a person who has ceased to be entitled to a benefit by virtue of the occurrence of an event enumerated in s. 131(1) cannot also be a person who is entitled to a benefit for the purposes of s. 103(1)(a)(i).

[79] The presumption against tautology holds that "the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain" (*Sullivan* at s. 8.03). It dictates that "courts should avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant" (*Sullivan* at s. 8.03, citing *Winters v Legal Services Society*, 1999 CanLII 656 at para 48, [1999] 3 SCR 160 (SCC)). In my view, anything other than an interpretation that is faithful to the

plain language of the provisions at issue in this case would fly in the face of the presumption against tautology. If s. 131(1)(f) were not interpreted as a termination of entitlement to benefits, full stop, then there would be no need for a special provision or formula for calculating entitlement to IR benefits for persons who were near or over the age of 65 at the time of the accident, as set out in s. 127. Nor would there be a need for s. 128, which provides for a lump sum payout to a person receiving IR benefits upon turning 65. In addition, if the termination of entitlement to IR benefits under s. 131(1)(f) was not also meant to exclude post-65 income loss from the definition of economic loss under s. 103(1)(a), then the use of the words "entitled to a benefit pursuant to Division 4" in s. 103(1)(a)(i)(A) would be mere surplusage.

[80] It is also to be presumed that changes to legislation happen for a reason, and that amendments "are made for some intelligible purpose: to clarify the meaning, to correct a mistake, [or] to change the law" (*Sullivan* at s. 23.02). Although this presumption is rebuttable, I can see no reasonable basis to interpret the addition of s. 131(1)(f) (which added reaching age 65 as a terminating event in relation to entitlement to Division 4, Part VIII benefits) as demonstrating anything other than a legislative intention to circumscribe what had previously been a lifetime entitlement to IR benefits. Such an interpretation conforms to the grammatical and ordinary wording of the section.

[81] Finally, the Legislature must be presumed to be a knowledgeable and competent drafter of legislation and is to be assumed to have used the clearest way of expressing its intention, rather than one that is convoluted (*Sullivan* at s. 8.02; see also *Peter Ballantyne Cree Nation v Canada (Attorney General)*, 2016 SKCA 124 at paras 193-195). Applying this principle, if the Legislature had intended for persons to continue to have a right to sue for economic loss under s. 103(1)(a)(i) after their entitlement to IR benefits under Part VIII have ended, in my view, the section would have been drafted differently and would have used clear and direct terms to state that intent.

Conclusion regarding statutory interpretation

[82] For the reasons I have discussed, s. 40.1, s. 103 and s. 131(1)(f) are properly interpreted by reference to the grammatical and ordinary sense of their language. Mr.

Whitley's entitlement to receive a benefit under Division 4 of Part VIII of the *AAIA* ended when he turned 65. Absent an entitlement to such a benefit, his future income loss did not fall within the definition of economic loss in s. 103(1)(a)(i)(A) or s. 103(2), which meant that s. 40.1 precluded him from maintaining an action to recover damages for any post-65 income loss.

[83] Accordingly, I conclude that the trial judge erred in law by failing to instruct the jury to that effect. That error unquestionably had an impact on the verdict with respect to damages and, as such, it is appropriate for this Court to intervene and set that verdict aside.

Remedy

[84] If the jury had been properly instructed on the applicable law, it could not have awarded damages in any amount to Mr. Whitley. As stated above (and as Mr. Whitley conceded during the appeal hearing), the evidence led at trial demonstrated that he had been fully compensated in relation to any pre-65 income loss. Additionally, Mr. Whitley could not at law recover anything in relation to his post-65 income loss because, in his circumstances, it did not fall within the definition of "economic loss" in s. 103 of the *AAIA*. That being the case, a properly instructed jury would be bound to award no damages to Mr. Whitley.

[85] Accordingly, I would set aside the jury's verdict on damages and substitute an award of $0.

CONCLUSION

[86] For the foregoing reasons, I would allow the appeal, set aside the jury's verdict on damages, and substitute an award of $0.

[87] Given the uniqueness, importance, and previously unsettled nature of the question resolved by this appeal, I would make no order as to costs.

"Kalmakoff J.A."

Kalmakoff J.A.

I concur.

"Schwann J.A."

Schwann J.A.

I concur.

"Tholl J.A."

Tholl J.A.