CITATION: Intact Insurance Company v. Carpenter, 2026 ONSC 1443
DIVISIONAL COURT FILE NO.: 297/25 and 301/25
DATE: 20260312

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: INTACT INSURANCE COMPANY, Appellant/Applicant

AND:

RICHARD CARPENTER, Respondent

BEFORE: Sachs, Backhouse and A. Himel JJ.

COUNSEL: *Mikhail Shloznikov,* for the Appellant/Applicant, Intact Insurance Company

Douglas Lee, for the Intervenor, the Licence Appeal Tribunal

No one appearing for the Respondent, Richard Carpenter

HEARD at Toronto: March 4, 2026

ENDORSEMENT

H. Sachs J.

[1] This is a statutory appeal and an application for judicial review of a decision by the Licence Appeal Tribunal (the "LAT"), dated November 27, 2024 (the "Decision") and the LAT's decision dated March 24, 2025 wherein the LAT dismissed Intact Insurance Company's (the "Insurer") request for reconsideration (the "Reconsideration Decision").

[2] The proceedings arise out of an accident that occurred on January 18, 2020. On that day a Caterpillar 930k Small Wheel Loader (the "Wheel Loader") was being driven on a municipal road on its way to clear snow at a nearby school. Mr. Carpenter (the "Insured") stepped into the path of the Wheel Loader and was struck.

[3] On October 2, 2020 the Insured applied to the Insurer [the Insurer was the automobile insurer of the owner of the Wheel Loader] seeking benefits under the *Statutory Accident Benefits Schedule*, O. Reg. 34/10 (the "*SABS"*).

[4] On November 26, 2020, the Insurer advised the Insured that he was ineligible for benefits as a wheel loader is not an automobile and therefore the January 18, 2020 incident did not fall under the definition of "accident" under the *SABS*.

[5] On October 24, 2022, the Insured filed an application with the LAT seeking accident benefits. On June 5, 2023, the LAT directed that a written hearing be held on the question of

whether the Insured was involved in an accident as defined in s. 3(1) of the *SABS*, a question that turned on whether the Wheel Loader was an "automobile" as defined in s. 3 of the *SABS*.

[6] The Decision determined that the Wheel Loader was an automobile within the meaning of s. 3(1) of the *SABS*. Therefore, the Insured was entitled to make a claim for statutory accident benefits. As already noted, in the Reconsideration Decision the LAT dismissed the Insurer's request for reconsideration.

[7] On the appeal and the application for judicial review of the Decision and Reconsideration Decision the Insurer makes two primary submissions. First, it argues that the LAT breached procedural fairness when it decided the issue based on a ground that was not argued by either party and without seeking further submissions from the parties on the issue. Second, it alleges that the LAT erred in law in its interpretation of the applicable test for the determination of the question of whether the Wheel Loader was an automobile.

[8] The Insured did not appear or file materials at the proceeding before this court. As a result, the LAT was granted Intervenor status to make submissions on all issues, but was directed not to take a position on the issues or to adopt an adversarial tone.

[9] Under s. 11(3) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1990, c. 12, Sched. G. appeals from the LAT may be made to the Divisional Court on a question of law alone. Following *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, 489 D.L.R. (4th) 191, the Divisional Court retains the discretion to hear a concurrent application for judicial review regarding any issues that are not subject to the statutory appeal mechanism.

[10] For questions of law subject to the statutory appeal mechanism, appellate standards of review apply and the applicable standard of review is correctness. The standard of review for judicial review on questions of fact or mixed fact and law not subject to the statutory right of appeal is reasonableness. Procedural fairness is a question of law subject to the correctness standard on the appeal.

Was the Insured afforded procedural fairness in these proceedings?

The applicable test

[11] In *Adams v. Pineland Amusements Ltd.,* 2007 ONCA 884, 88 O.R. (3d) 321, the Ontario Court of Appeal confirmed the following three-part test for determining if a vehicle is an automobile:

(i) Is the vehicle an "automobile" in ordinary parlance?

(ii) If not, then, is the vehicle defined as an "automobile" in the wording of the insurance policy?

(iii) If not, then, does the vehicle fall within any enlarged definition of "automobile" in any relevant statute? (*Adams*, at para. 7).

The parties' submissions before the LAT

[12] Counsel for the Insured stated the following with respect to the Insured's position before the LAT on the three-part test:

> 26. The [Insured] submits that while the Caterpillar 930K would not normally be considered an automobile in ordinary parlance, it is an "automobile" within the enlarged definition of s. 224 of the *Insurance Act*…

[13] Thus, before the LAT the Insured took the position that the first part of the test approved in *Adams* did not apply, but the third part did. The Insured's submissions then proceeded to focus on the third part of the test.

[14] In its submissions on the third part of the test, the Insured made reference to the decision in *Grummet v. Federation Insurance Co. of Canada*, 46 O.R. (3d) 340 (Sup. Ct.), at para. 16, which begins as follows: "In attempting to determine if a vehicle is an automobile in ordinary parlance, it is in my view appropriate to consider the purpose and function of the vehicle." Relying on *Grummet*, the Insured proceeded to make submissions on the purpose and function of the Wheel Loader. In doing so he noted that the vehicle "had all the indicia of an automobile" because it was "equipped with a driver's seat, front and reverse gears, combustion engine, steering wheel, tire clad wheels, braking system lights, signal lights, speedometer, seatbelt, GPS navigation system, enclosed driver compartment, automatic temperature control, mirrors, radio, speaker and could operate at speeds of up to 50km/h or more." (Insured's Written Submissions to the LAT, para. 36). The Insured also noted that at the time of the incident the vehicle was not being used as a snowplow as the front blade was raised. It was being used to travel on a public roadway over seven kilometers from the owner of the vehicle's yard to a school parking lot to shovel snow. (Insured's Written Submissions, para. 37).

[15] In its written submissions before the LAT the Insurer stated the following:

> 17. The [Insured] agrees that a wheel loader not (*sic*) an automobile in ordinary parlance.

[16] The Insurer also noted that it was not in dispute that the second part of the test did not apply as the Wheel Loader was not listed or defined as an automobile under any insurance policy. Therefore, the Insurer's submissions went on to address the third part of the test. In doing so it had this to say about the Insured's submissions regarding purpose and function:

> 35. The [Insurer] submits that there is no further residual component to the three-part test endorsed by the Court of Appeal in *Beaudoin v. Travelers et al*. There are no ancillary considerations or saving

> provisions for any further inquiry regarding purpose, function, and/or indicia of a vehicle, outside of the first part of the test.
>
> 36. The fact that a wheel loader can have, *inter alia*, wheels, doors, signal lights, GPS, and can travel on roads does not make it an automobile or akin to one.

The Decision

[17] In the Decision the LAT found that the Wheel Loader was an automobile in ordinary parlance (the first part of the test) and thus, there was no need to address the other prongs of the test. In doing so it noted that the Insured had relied on *Grummet*, supra., where the Superior Court had found that to determine whether a vehicle is an "automobile" in ordinary parlance, it is appropriate to consider its purpose and function. It found that it was bound by *Grummett*, and that prior to the accident occurring the Wheel Loader had been driving on a public roadway for seven kilometers. It was not loading anything or using its plow, which was in the upright position. Further, according to its product specifications, "it had the capability of driving up to 40 km/hr. It was equipped with a driver's seat, tire clad wheels, steering wheel, braking system, lights, signal lights, speedometer, seatbelt, GPS system, enclosed driver compartment, mirrors, and radio." According to the Decision "all of these factors, persuade me that the purpose and function of the [Wheel Loader] at the time of the accident was to behave like an automobile. Accordingly, I find that it was an automobile in ordinary parlance."

The Reconsideration Decision

[18] In its request for reconsideration, the Insured submitted that the LAT had made an error of law or fact that materially affected its decision and that it had committed a material breach of procedural fairness by determining the issue on the first prong of the *Adams* test, when neither party had relied on that part of the test and had made their submissions on the third part of the test. The Insurer submitted that if the LAT was going to proceed in this way, it had an obligation to seek further submissions from the parties.

[19] In the Reconsideration Decision, the LAT recognized that the Insured had stated that the vehicle "would not normally be considered an automobile in ordinary parlance." However, the LAT then relied on *Grummett*, which dealt with the ordinary parlance test. According to the LAT, the Insurer responded to those submissions. Thus, the LAT concluded that both parties had the opportunity to address the first part of the test and did so.

[20] The LAT then went on to consider the Insurer's submissions that it had erred in its analysis regarding the first part of the test. It dismissed those arguments on two bases. First, it found that it was a request to reweigh evidence, which is not the function of reconsideration. Second, that to the extent the arguments were new arguments, "[t]he reconsideration process is not an opportunity to advance new arguments that a party could have but did not make during the hearing, which is what I find the respondent is attempting to do."

Analysis

[21] The content of the duty of fairness in the administrative context is informed by the factors outlined by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. Those factors (which are not exhaustive) are the nature of the decision being made and the process followed in making it; the nature of the statutory scheme; the importance of the decision to the individual(s) affected by it; the legitimate expectations of the person challenging the decision and the choices of procedure made by the decision-maker (particularly where the statute leaves that choice to the decision maker). As *Baker* makes clear at para. 28:

> The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional and social context of the decision.

[22] In this case the LAT had considerable discretion as to the procedure chosen to make the determination at issue. However, it also had the obligation to conduct that procedure in a manner that ensured that each party had the "opportunity to present their case fully and fairly." In considering whether that standard was met it is important to recognize that the decision at issue was a significant one since it was determinative of an important right, the right to statutory accident benefits.

[23] In his written submissions the Insured conceded that the Wheel Loader "would not normally be considered to be an automobile in ordinary parlance." This is an explicit concession that the first part of the test did not apply. In its Reconsideration Decision the LAT found that no such concession was made because, in his submissions on the third part of the test, the Insured referred to factors that were relevant to the first part of the test. This is an unreasonable position to take in the absence of an explicit statement by the Insured that he was withdrawing his concession and was now seeking to argue the first part of the test.

[24] The Insurer quite rightly relied on the Insured's concession that the first part of the test was not in issue and made the choice not to make fulsome submissions on that issue. It pointed out that the purpose, function and indicia of a vehicle were irrelevant to the analysis under the third part of the test, which was the only part of the test at issue. It then made a cursory comment that the indicia of a vehicle do not make it an automobile. Had it known that the first part of the test was in fact in issue, it would have made much more fulsome submissions. This is apparent from its submissions requesting a reconsideration of the Decision.

[25] While a decision maker may have the right to reject a concession made by the parties, it is a denial of procedural fairness to do so without giving the parties the opportunity to make full submissions on the issue. Thus, in this case, before deciding the case on the first part of the test,

the LAT should have written to the parties asking them to outline why they were both taking the position that the first part of the test did not apply.

[26] The statutory scheme allows for reconsideration, which can be an opportunity to cure procedural defects like the one at issue in this case. The LAT had full submissions from both parties on the first part of the test. However, instead of considering them it erroneously decided that it had not made a procedural error and then found that the arguments it did not hear the first time did not meet the threshold for reconsideration.

[27] The appropriate remedy for a breach of procedural fairness is to remit the matter back to the LAT to decide after giving the parties a full and fair opportunity to make their submissions.

Conclusion

[28] For these reasons the appeal is allowed, the Decision and the Reconsideration Decision are set aside and the matter is remitted to a different adjudicator at the LAT for determination on all the issues. Since the matter was dealt with in the appeal on the question of procedural fairness, there is no need for this court to exercise its discretion to hear the judicial review application, or to address the question of whether the LAT erred in law in its interpretation of the *Adams* test.

[29] Since no one is requesting costs, there will be no order as to costs.

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Sachs J.

I agree _____
Backhouse J.

I agree _____
A. Himel J.

Date: March 12, 2026