

Citation: Abu-Ain v. Security National Insurance Company et al, 2026 ONSC 1494
DIVISIONAL COURT FILE NO.: DC-25-00000448-0000
DC-25-00000451-00JR
DATE: 20260331

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Leitch, Sachs and Brownstone JJ.

BETWEEN:)
)
MAHMOUD ABU-AIN)
) *Mohamed Elbassouni, for the*
Appellant/Applicant) *appellant/applicant*
)
– and –)
)
)
)
SECURITY NATIONAL INSURANCE)
COMPANY & LICENCE APPEAL)
TRIBUNAL) *Matthew Samuels, for the respondent*
)
Respondents) *Douglas Lee, for the Licence Appeal*
) *Tribunal*
)
)
)
)
) **HEARD at Toronto:** February 19, 2026

Brownstone J.

[1] Mahmood Abu-Ain appeals and brings an application for judicial review of the Licence Appeal Tribunal Reconsideration Decision dated May 6, 2025, and the underlying LAT decision dated January 13, 2025, which determined that Mr. Abu-Ain was not an “insured person” under s. 3(1) of the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 (“SABS”).

- [2] On August 2, 2021, Mr. Abu-Ain, then 20 years old, was a passenger in a car on Highway 401 when the driver lost control of the car. The car rolled and hit the guardrail, and Mr. Abu-Ain sustained very significant injuries.
- [3] Mr. Abu-Ain did not own a car and therefore had no car insurance of his own. In November 2021, he submitted an application for accident benefits to the respondent Security National Insurance Company under his aunt's insurance policy. Mr. Abu-Ain claimed he was financially dependent on his aunt and uncle.
- [4] Security National began making benefit payments to Mr. Abu-Ain. It also started a priority dispute with the publicly funded Motor Vehicle Accident Insurance Fund, claiming that the Fund, and not Security National, was the appropriate provider of benefits.
- [5] On June 7, 2022, Security National found that Mr. Abu-Ain met the criteria of catastrophic impairment. Security National paid well over \$400,000 of statutory accident benefits to Mr. Abu-Ain in respect of his injuries. However, when Mr. Abu-Ain filed an application seeking various benefits in January 2024, Security National denied these benefits.
- [6] At the LAT proceedings that were convened to determine Mr. Abu-Ain's entitlement, Security National proposed that the LAT first determine, as a preliminary issue, whether Mr. Abu-Ain met the definition of "insured person" under the SABS. Mr. Abu-Ain requested that the matter be adjourned pending the results of the priority arbitration between Security National and the Fund, where the very issue of whether Security National was the proper insurer to pay Mr. Abu-Ain's benefits was being arbitrated.
- [7] The LAT did not adjourn the proceedings. It determined that Mr. Abu-Ain was not an "insured person" within the meaning of the SABS. Having determined the preliminary issue in Security National's favour, it dismissed Mr. Abu-Ain's claim for benefits. The Reconsideration decision upheld the LAT's initial decision.
- [8] Mr. Abu-Ain appeals and seeks judicial review of the decisions on grounds of procedural fairness/ abuse of process, errors of law, and errors of mixed fact and law in applying the dependency test.
- [9] For the reasons that follow, I would allow Mr. Abu-Ain's appeal.

Jurisdiction and standard of review

- [10] Mr. Abu-Ain has a statutory right of appeal on questions of law only under ss. 11(1) and (6) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sch. G. Where there is a circumscribed right of appeal, a party may bring an application for judicial review for questions that fall outside of the scope of the statutory right of appeal: *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, 489 D.L.R. (4th) 191, at paras. 43-50. Judicial review is discretionary, and the court may exercise its discretion to decline to grant relief: *Yatar*, at para. 51.

- [11] Questions of law attract a correctness standard on appeal. Questions of fact and mixed fact and law are reviewed on a reasonableness standard on judicial review. No deference is accorded to the tribunal on matters of procedural fairness: *Yatar*, at para. 48, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220, at paras. 27-30, *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339.

Analysis

- [12] The LAT hearing about Mr. Abu-Ain’s entitlement to statutory accident benefits and the nature and amount of benefits to be provided fits within a larger statutory regime governing statutory accident benefits. That broader regime must be considered in order to understand and fairly dispose of this case.

The legislative regime that governs statutory accident benefits

- [13] Under s. 280 of the *Insurance Act*, an insured person or insurer may apply to the LAT to resolve a dispute about an insured person’s entitlement to statutory accident benefits or the amount of those benefits.
- [14] Subsection 2(4) of the SABS provides that “[b]enefits payable under this Regulation in respect of an insured person shall be paid by the insurer that is liable to pay under subsection 268 (2) [the priority provisions] of the Act”. Insured person is defined in s. 3 of the SABS.
- [15] The SABS is consumer protection legislation. Its interpretation and application must be consistent with furthering its public policy objectives: *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882, 148 O.R. (3d) 438, at para. 45, leave to appeal refused, [2020] S.C.C.A. No. 7. This is particularly important in cases of catastrophic impairment. The Court of Appeal in *Tomec* considered the proper interpretation of the limitation period in the *Insurance Act*, R.S.O. 1990, c. I.8 and the SABS. The Court stated:

[42] Unlike the situation in *Ryan and Levesque*, the SABS contains both the limitation period and the statutory mechanisms designed to provide no-fault benefits. *In Arts (Litigation Guardian of) v. State Farm Insurance Co.* (2008), 2008 CanLII 25055 (ON SC), 91 O.R. (3d) 394, [2008] O.J. No. 2096 (S.C.J.), MacKinnon J. provided a compelling analysis of the SABS' purposes and offered guidance regarding the interpretation of the SABS, at paras. 14 and 16:

The legislature's definition of "catastrophic impairment" is intended to foster fairness for victims of motor vehicle collisions by ensuring that accident victims with most health needs have access to expanded medical and rehabilitation benefits. That definition is intended to be remedial and inclusive, not restrictive.

.....

The SABS are remedial and constitute consumer protection legislation. As such, it is to be read in its entire context and in their ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature. The goal of the legislation is to reduce the economic dislocation and hardship of motor vehicle accident victims and as such, assumes an importance which is both pressing and substantial.

[43] The decisions below and Economical's narrow interpretation of the limitation are incongruous with the SABS' consumer protection purposes. The appellant falls within a small category of victims who suffer from lasting and very serious health impacts as result of a motor vehicle accident. The SABS is supposed to maximize benefits for that class of victims. A hard limitation period prevents the appellant from making a claim for the benefits the SABS are intended to provide. I do not see how such a result could be consistent with consumer protection legislation designed to provide fair compensation and minimize economic disruption in the lives of accident victims.

- [16] The case before the court here deals not with interpreting limitation periods which was the issue in *Tomec*, but with the issue of whether the injured person meets the definition of “insured person” under the SABS. However, the interpretive principle is the same. This remedial legislation must be considered in the statutory context in which it operates in a manner that is consistent with its public policy objectives. One of those objectives is to “reduce the economic dislocation and hardship of motor vehicle accidents” for injured persons.
- [17] The SABS is one part of the relevant regime. But it does not exist in a vacuum. It is part of an overall legislative regime governing statutory accident benefits in a manner that protects the people who need the benefits. Another part of the benefits regime includes the legislation and regulation that govern which insurer has priority in a dispute and is obligated to pay the benefits to the injured person.
- [18] Priority disputes among insurers are not uncommon. Those disputes are governed by s. 268(2) of the *Insurance Act* and O. Reg. 283/95, the “dispute between insurers” (DBI) regulation.
- [19] The *Insurance Act* sets out the priority between insurers. The Fund is the payor of last resort. The Fund only steps in if no private insurance is available to an injured person.
- [20] The DBI regulation provides for how disputes about priority are to be determined. The DBI regulation provides in relevant part as follows:
- 2.1 (1) This section applies in respect of benefits that may be payable as a result of an accident that occurs on or after September 1, 2010.
- (2) An insurer shall promptly provide an application and any other appropriate forms in accordance with the Schedule to an applicant who notifies the insurer that he or she wishes to apply for benefits.

(4) The applicant shall use the application provided by the insurer and shall send the completed application to only one insurer.

(5) An insurer that provides an application under subsection (2) to an applicant shall not take any action intended to prevent or stop the applicant from submitting a completed application to the insurer and shall not refuse to accept the completed application or redirect the applicant to another insurer.

(6) The first insurer that receives a completed application for benefits from the applicant shall commence paying the benefits in accordance with the provisions of the Schedule pending the resolution of any dispute as to which insurer is required to pay the benefits.

3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section.

[21] The system is clear. It is designed to operate on the basis that an insurer is required to “pay now, dispute later”. An injured person is to provide an application to a single insurer. As long as there is a sufficient nexus between that insurer and the injured person, that insurer is to pay benefits and continue to do so pending the result of any priority dispute. In this way, an injured person is not left without benefits while insurers are disputing which of them is responsible for payment of those benefits.

[22] If an insurer wishes to dispute its priority obligation to pay, it is required to submit the matter to arbitration. The injured person is not a party to the arbitration of the priority dispute.

A priority dispute and LAT proceedings were both underway in this case

[23] As noted above, when Security National first received Mr. Abu-Ain’s application for benefits, it adjusted the claim and began paying benefits, paying well over \$400,000 in the first three years after Mr. Abu-Ain’s accident. As it was entitled to do, Security National also started a priority dispute with the Fund. That priority dispute had not been resolved by the time the LAT hearings at issue in this case were heard.

[24] In January 2024, Security National denied some benefits claimed by Mr. Abu-Ain, which were based on treatment plans submitted in 2022 and 2023. The benefits Mr. Abu-Ain was seeking included income replacement, chiropractic services, attendant care services, case management services, medical expenses, assistive devices, MRI services, physiotherapy services, optometric services, massage therapy, and a footcare assessment.

[25] As a result of Security National’s denial, Mr. Abu-Ain requested a hearing before the LAT, seeking payment of these benefits and an award against Security National for unreasonably withholding or delaying payments.

The LAT proceedings and decisions

- [26] A case conference was held on July 30, 2024. Security National requested an order that the preliminary issue of whether Mr. Abu-Ain meets the definition of “insured person” under the SABS be determined first. The case management decision memorializes the fact that Mr. Abu-Ain raised the issue that “the priority dispute relates to whether the applicant is a dependent of a named insured for the purpose of determining who must pay for benefits. This issue is at the very least extremely similar to, and connected with, the issue to be decided in the preliminary hearing.” Mr. Abu-Ain noted that he had no access to documents exchanged in the priority arbitration and requested production of those documents. That request was denied.
- [27] The LAT granted Security National’s requested order, and also ordered that “[i]f the application is disposed at the preliminary issue stage, the Tribunal will dismiss the application and order the closure of this file. The substantive issue hearing will be vacated.”
- [28] The LAT set a schedule for the exchange of materials for the preliminary issues hearing, which was to be determined in writing.
- [29] Mr. Abu-Ain’s written submissions at the preliminary hearing started with his position that the preliminary hearing ought to be adjourned until the priority dispute between Security National and the Fund was decided. He submitted that it was unfair to proceed to determine this issue in light of s. 2.1 of the DBI regulation set out at paragraph 20 above. Mr. Abu-Ain noted that Security National had filed a dispute with the Fund, asserting that the Fund is the priority insurer. Mr. Abu-Ain submitted to the LAT that “[t]he crux of that priority dispute rests solely on the same dependency issue being decided before a different arbitrator. Essentially, the Respondent is trying to circumvent the rules by arguing that the Applicant is not a dependant on the named insured and, therefore, escaping its obligation of “Pay first, dispute later”...”
- [30] Security National took the position that accident benefits disputes are distinct from priority disputes and therefore the two proceedings were entirely separate. There was nothing prohibiting the LAT from determining whether Mr. Abu-Ain was a dependent and therefore met the definition of an “insured person” under the SABS.
- [31] The LAT delivered its written decision on the preliminary issue on January 13, 2025, finding that Mr. Abu-Ain is not an insured person as defined in s. 3(1) of the SABS. Vice-Chair Moore’s only reference to Mr. Abu-Ain’s submission about the problem with adjudicating this matter while the priority dispute was underway was the following statement:

The applicant also argues that the preliminary issue hearing is premature and should not be heard while a priority dispute remains unresolved. While the respondent did not provide specific submissions related to the applicant's argument, I find that the priority dispute is not before the Tribunal and the outcome of the priority dispute has no impact on whether the applicant meets the definition of an “insured person” pursuant to s. 3(1) of the *Schedule*. As such, I am proceeding with the preliminary issue hearing.

- [32] The LAT went on to consider whether Mr. Abu-Ain met the “dependency” test and found he did not. Mr. Abu-Ain was therefore not an insured person. The entire application for benefits was dismissed.
- [33] Mr. Abu-Ain sought reconsideration of the decision. In his submission in support of his request for reconsideration, Mr. Abu-Ain again raised the argument that it was unfair to proceed with this determination given the pending priority dispute between Security National and the Fund. Mr. Abu-Ain submitted that this was an attempt at re-litigation or a collateral attack.
- [34] In its reasons dismissing the reconsideration request on May 6, 2025, Vice-Chair Moore stated:

[20] I find that the applicant has not provided the Tribunal with any authority to support that the Tribunal has the jurisdiction to consider a priority dispute, or how the outcome of the priority dispute would impact the narrow preliminary issue that was before the Tribunal to support that an error was made. In addition, I find that the same applies to the applicant’s argument with respect to the nexus test. The nexus test relates to the priority dispute, which the Tribunal has no jurisdiction to consider, and according to section 268 of the *Insurance Act*, the first insurance company to receive a completed application for accident benefits is obligated to pay benefits. That does not preclude the insurer from raising a preliminary issue with the Tribunal nor prevent the Tribunal from considering a preliminary issue that is properly raised.

[21] I also find that the applicant’s arguments were addressed, at least in part, at paragraph [9] of the decision ...

The application of the doctrine of abuse of process

- [35] The Supreme Court of Canada has explained that “[i]n administrative proceedings, abuse of process is a question of procedural fairness”: *Abrametz*, at para. 38. While the Court in *Abrametz* was dealing specifically with delay as an abuse of process, it made general comments about the doctrine in the administrative law context.
- [36] The Court noted that abuse of process is a broad and flexible concept, and at para. 35 cited with approval the following dissenting reasons of Goudge J.A. in the Court of Appeal for Ontario in *Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), rev’d 2002 SCC 63, 2022 SCC 63, [2002] 3 S.C.R. 307:

[The doctrine of abuse of process] engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. (internal citations omitted)

- [37] The Court went on to note at paragraph 36 that the “proper administration of justice and ensuring fairness are central to the doctrine”. The doctrine “aims to prevent unfairness by precluding ‘abuse of the decision-making process’” (internal citations omitted).
- [38] Mr. Abu-Ain submits that permitting Security National to litigate dependency at the LAT while it was arbitrating priority was an abuse of process. Having triggered the arbitration process, which is designed to ensure continuous benefit payments while insurers sort out responsibility among themselves, it was an abuse of process to proceed at the LAT with the preliminary issue of whether Mr. Abu-Ain was an insured person.
- [39] Security National submits that the two regimes are separate, one governing entitlement to benefits and one governing priority. There is nothing prohibiting the LAT from proceeding as it did. The LAT was correct to decide whether Mr. Abu-Ain was an insured of Security National. The LAT did not determine whether any other insurers are available to Mr. Abu-Ain, so it did not improperly interfere with the priority dispute.
- [40] I agree with Mr. Abu-Ain that by proceeding to determine whether Mr. Abu-Ain was an insured person while the priority dispute, centred on this very issue, was pending, was an abuse of process as it undermines the statutory scheme for managing priority disputes.
- [41] The LAT failed to consider the context in which it was being asked to make its decision. It failed to grapple with the issue of the interplay between the priority dispute and the legal question it was being asked to determine, merely accepting the respondent’s position that they are two entirely separate issues.
- [42] The LAT failed to turn its mind to the fact that the consequences of its decision to proceed with the “preliminary issues” determination was exactly the situation the entire statutory accident benefits scheme is designed to avoid – an injured person being without benefits because of a dispute between insurers about priority. Continuity of benefits while the insurers dispute priority is a cornerstone of the entire legislative scheme.
- [43] The LAT’s decision to proceed with the preliminary issue determination was compounded by its next decision to dismiss Mr. Abu-Ain’s substantive claims for benefits on the basis that Mr. Abu-Ain was not an insured person. The Tribunal did so while the very issue of whether Security National or the Fund was responsible for these benefits was being arbitrated in another forum. The LAT knew this was the case.
- [44] The result of this failure is starkly evident in this case, which involves a catastrophically impaired individual who had received close to \$500,000 of statutory accident benefits from the insurer in the first years following the accident. He was clearly in need of benefits. Yet his claim for benefits has been dismissed by the LAT on the basis that he is not an insured person with respect to Security National.
- [45] If Security National wished to stop paying Mr. Abu-Ain’s benefits, its proper course of action was to ensure the arbitration proceeded apace. The LAT erred in proceeding with its preliminary issue determination in these circumstances. The LAT has improperly permitted Security National to do an “end run” around the priority dispute process. To do so is an

abuse of process. It is manifestly unfair to Mr. Abu-Ain and brings the entire administration of the statutory accident benefits regime into disrepute.

[46] Having determined that the appeal must succeed on this ground, I do not need to consider the other grounds raised by Mr. Abu-Ain.

Disposition

[47] During the hearing of the appeal, the court was advised that the Fund has now accepted priority. According to counsel, the Fund has started to repay Security National but has not made any contact with Mr. Abu-Ain about ongoing benefits.

[48] Therefore, the decision of the LAT dismissing Mr. Abu-Ain’s claim for statutory benefits on the basis that he is not an insured person is overturned. The substantive benefits claim hearing is returned to the LAT for a hearing with the proper responding party (seemingly the Fund), in the event Mr. Abu-Ain and the Fund are unable to agree on his entitlement and the amounts payable in respect of those claims.

[49] In accordance with the parties’ agreement, Security National shall pay \$2,500 in costs, inclusive of disbursements and HST, to Mr. Abu-Ain.

Brownstone, J.

I agree: _____
Leitch J.

I agree: _____
Sachs J.

Released: March 31, 2026

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BETWEEN:

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Applicant

– and –

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REASONS FOR JUDGMENT

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