CITATION: Coban v. Allstate Insurance Company, 2026 ONSC 1925
COURT FILE NO.: DC-24-00002951-0000
DATE: 20260331

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Backhouse, Fregeau and Schreck JJ.

BETWEEN:	
JOSEF COBAN *Applicant/Appellant*	*J.Y. Obagi,* for the applicant/appellant
– and –	
ALLSTATE INSURANCE COMPANY *Respondent*	*J. Griffiths and S. Wong,* for the respondent
	HEARD: February 25, 2026

REASONS FOR JUDGMENT

On appeal from the decision of the Licence Appeal Tribunal, dated November 28, 2024 and reported at 2024 CanLII 118770, and the reconsideration decision, dated April 23, 2025 and reported at 2025 CanLII 35907.

SCHRECK J.:

[1] Josef Coban had a workplace accident in 2014 and was unable to return to his former job as a contractor. He began retraining as an architectural technologist through a Work Transition Plan ("WTP") with the Workplace Safety and Insurance Board ("WSIB") and received wage loss benefits as long as he complied with the requirements of the WTP. In October 2016, Mr. Coban's WTP requirements were that he attend college and work eight hours per week at an architecture firm. He received wage loss benefits from the WSIB, but was not paid by the firm.

[2] On October 6, 2018, Mr. Coban had another accident, this time in an automobile. His injuries from this accident were far more serious and he is now a paraplegic. Because of this, Mr. Coban was unable to continue working at the architectural firm or attending school and therefore could not comply with his WTP. As a result, his wage loss benefits were reduced.

[3] Mr. Coban sought compensation for his loss of income from his insurer, Allstate Insurance, in accordance with the *Statutory Accident Benefits Schedule – Effective September 1, 2010,* O. Reg. 34/10 ("*SABS*"). His insurer rejected the claim on the basis that Mr. Coban was not "employed" at the time of the accident, which is a condition of eligibility for income replacement benefits according to s. 5(1) of the *SABS.*

[4] Mr. Coban applied to the Licence Appeal Tribunal ("the Tribunal") to dispute the rejection of his claim. The Tribunal concluded that the term "employed" in s. 5(1) of the *SABS* requires that an individual be in an employment relationship and receive remuneration "in exchange" for services to the employer. Although Mr. Coban was in an employment relationship with the architectural firm, he received his income from the WSIB, not the employer. The Tribunal concluded that Mr. Coban would have received the same income if his WTP did not include work for the employer, and his income was therefore not "in exchange" for services rendered to the employer. He was therefore not "employed" within the meaning s. 5(1) of the *SABS* and not eligible for income replacement benefits.

[5] Mr. Coban appeals and applies for judicial review of the Tribunal's decision. He submits that the Tribunal's conclusion was based on legal errors and unreasonable. Allstate Insurance takes the position that the Tribunal's conclusion was correct and reasonable.

[6] I would allow the appeal and the application for judicial review. In my view, the Tribunal's interpretation of the term "employed" in s. 5(1) was overly narrow and based on an erroneous interpretation of authority from this court. A proper application of the principles of statutory interpretation leads to the conclusion that Mr. Coban was "employed."

[7] The following reasons explain these conclusions.

I. FACTS

A. The Workplace Accident

[8] On December 15, 2014, the appellant, a contractor, was injured in a workplace accident, as a result of which he was unable to continue working. He applied to the WSIB for compensation pursuant to s. 43(1) of the *Workplace Safety and Insurance Act, 1997,* S.O. 1997, c. 16 ("*WSIA*"). A WTP was created, the goal of which was for the appellant to retrain as an architectural technologist and obtain work in that field. The appellant was required to comply with the requirements of the WTP in order to receive compensation from the WSIB. As part of the WTP, the appellant enrolled in a two-year program at Algonquin College and would receive $651.51 per week from the WSIB.

B. The Appellant's Employment

[9] At the completion of the Algonquin College program, the appellant was offered a work placement at an architectural firm, Cole & Associates Architects Inc. ("Cole"). As a result, WSIB amended his WTP such that the appellant would work at Cole for 37.5 hours per week between July 3, 2018 and August 31, 2018. He would not be paid by Cole, but would continue to receive $651.51 from the WSIB as long as he complied with his WTP.

[10] After the work placement ended, the appellant enrolled in a third year at Algonquin College with the goal of obtaining an Architectural Technologist Diploma. However, he also wished to continue working at Cole on a part-time basis. The appellant's WTP was accordingly amended to include attendance at Algonquin College as well as working eight hours per week at Cole throughout the semester until December 21, 2018. As before, he would not be paid by Cole but would continue to receive $651.51 from the WSIB as long as he complied with his WTP.

C. The Automobile Accident

[11] The appellant complied with all of the conditions of his WTP until October 6, 2018, when he was injured in a motor vehicle accident. His injuries rendered him a paraplegic. As a result, he was no longer able to attend school or work at Cole.

[12] The WSIB wrote a letter to the appellant, dated October 18, 2018, advising him that if he was "not able to resume participation in your WT Plan" by November 5, 2018, he would no longer be entitled to receive $651.51 per week from the WSIB and his loss of earnings benefits would be reduced. The appellant was unable to resume participation in his WTP and his benefits were accordingly reduced.

D. The Tribunal's Decision

(i) Application for Income Replacement Benefits

[13] The appellant applied for income replacement benefits pursuant to the *SABS*. The respondent denied the application on the basis that the appellant was not "employed" within the meaning of s. 5(1) of the *SABS* and therefore not eligible to receive income replacement benefits.

(ii) The First Tribunal Decision

[14] The appellant applied to the Licence Appeal Tribunal ("LAT") to resolve the dispute. In a decision dated May 3, 2023 and reported at 2023 CanLII 40118 (ON LAT), Adjudicator Demarce concluded that the appellant was "employed" and entitled to benefits. A reconsideration request by the respondent was granted on November 30, 2023 and a new hearing was ordered (2023 CanLII 113761 (ON LAT)).

(ii) The Second Tribunal Decision

[15] The new hearing took place before Adjudicator Levitsky, who released a decision on November 28, 2024 in which she concluded that the appellant was not "employed" at the relevant time. A reconsideration request was refused on April 23, 2025.

II. ANALYSIS

A. Jurisdiction and Standard of Review

[16] The appellant appeals the decisions of the Tribunal to this court pursuant to s. 11(6) of the *Licence Appeal Tribunal Act, 1999,* S.O. 1999, c. 12, which provides that decisions of the Tribunal under the *Insurance Act,* R.S.O. 1990, c. I.8 can be appealed to this court on a question of law only. The standard of review on appeal on questions of law is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37.

[17] The appellant also applies for judicial review of the Tribunal's decisions pursuant to s. 2(1) of the *Judicial Review Procedure Act,* R.S.O. 1990, c. J.1. Where a person pursues both a statutory appeal and judicial review, the court's review is not restricted to questions of law, which continue to be reviewed for correctness, but may also include questions of fact and mixed fact and law, which are reviewed on a standard of reasonableness: *Yatar v. TD Insurance Meloche Monnex,* 2024 SCC 8, 489 D.L.R. (4th) 191, at paras. 48, 60-66.

B. The Issue

(i) Section 5(1) of the SABS

[18] Section 5(1) of the *SABS* provides that "The insurer shall pay an income replacement benefit to an insured person who sustains an impairment as a result of an accident" if the insured person satisfies certain conditions, the relevant one of which is as follows:

> 1. The insured person,
>
> i. was employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of that employment. . . .

The sole issue before the Tribunal and before this court is whether the appellant was "employed" within the meaning of this section at the time of the motor vehicle accident and therefore entitled to income replacements benefits, the amount of which remains to be determined. At the time of the accident, the appellant was working at Cole for eight hours per week. Cole did not pay him, but he was receiving $651.51 in loss of earnings benefits from the WSIB provided he fulfilled the conditions of his WTP, which included a requirement that he work at Cole.

(ii) Principles of Statutory Interpretation

[19] The issue here is one of statutory interpretation. The principles which a court must apply in interpreting a statutory provision are well established and can be summarized as follows:

- The words of a statutory provision must be considered "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *R. v. Carignan*, 2025 SCC 43, 509 D.L.R. (4th) 1, at para. 55; *Piekut v. Canada (Minister of National Revenue)*, 2025 SCC 13, 502 D.L.R. (4th) 1, at para. 42; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Vavilov*, at para. 117.

- The meaning of a provision is determined "by reference to its text, context and purpose, " although these need not be considered separately or in a formulaic way, as they are often interdependent: *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, 502 D.L.R. (4th) 59, at para. 30; *Auer v. Auer*, 2024 SCC 36, 497 D.L.R. (4th) 381, at para. 64; *Québec (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, 498 D.L.R. (4th) 316, at para. 24; *Piekut*, at para. 43.

- The court's focus must be on the text of the legislation, which is "the anchor of the interpretative exercise," although "plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms": *R. v. Rousselle*, 2025 SCC 35, at para. 183; *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31; *La Presse inc. v. Québec*, 2023 SCC 22, at para. 23; *Québec (Commission des droits de la personne et des droits de la jeunesse)*, at para. 24; *R. v. Kim*, 2025 ONCA 478, 178 O.R. (3d) 266, at para. 32; *Piekut*, at para. 45.

- "Statutory interpretation is centred on the intent of the legislature at the time of enactment and courts are bound to give effect to that intent," bearing in mind that legislation "shall be interpreted as being remedial": *Telus Communications*, at para. 32; *Kim*, at para. 32; *Metrolinx v. Amalgamated Transit Union, Local 1587*, 2024 ONSC 1900, 172 O.R. (3d) 457 (Div. Ct.), at para. 54; *Legislation Act, 2006*, S.O. 2006, c. 21, s. 64(1).

- Ultimately, "[a]n appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just": *Piekut*, at para. 49 (citing R. Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis, 2022), at §2.01); *Alex*, at para. 32.

C. The Tribunal's Decision

(i) Overview

[20] The Tribunal did not apply the principles of statutory interpretation in its decision. Rather, it relied on this court's decision in *Arab v. Unica Insurance*, 2022 ONSC 5761, which it concluded stood for the proposition that "employed" meant "connected to income-earning and receiving wages in exchange for services being rendered." While the Tribunal was satisfied that the appellant was in an employment relationship with Cole, it concluded that he did not receive remuneration "in exchange" for services to Cole because he would have received the same loss of

earnings benefits if he had attended school and not worked at Cole. Based on this, the Tribunal concluded that "the remuneration was not dependent on whether he was actually providing those services."

[21] With respect, I am of the view that in concluding as it did, the Tribunal erred in several respects, leading it to adopt an overly technical and narrow interpretation of the term "employed." A proper application of the principles of statutory interpretation that considers the context and purpose of the provision and the overall legislative scheme results in a broader interpretation. Furthermore, the decision in *Arab*, which involved a completely different issue than in this case, did not interpret the term as narrowly as the Tribunal thought.

(ii) The Purpose of the SABS

[22] The *SABS* is an integral part of Ontario's "no-fault" automobile insurance regime. Subject to certain exceptions set out in s. 267.5 of the *Insurance Act* which have no application in this case, the victim of an automobile accident has no right to sue in tort for economic loss resulting from the accident and the only compensation available is benefits from his or her own insurance company in accordance with the *SABS*. The purpose of the *SABS* is to cover most economic losses on a no-fault basis: C.H. Zingg and J.M. Flaherty, *Accident Benefits in Ontario* (Toronto: Thomson Reuters, 2025), at §1:5.

[23] It is well-established that a primary object of the *SABS* is consumer protection, the goal of which is to "reduce the economic dislocation and hardship of motor vehicle accident victims": at para. 42 (citing *Arts (Litigation Guardian of) v. State Farm Insurance Co.* (2008), 91 O.R. (3d) 394 (S.C.J.), at para. 16; *Smith v. Co-Operators General Insurance Co.*, 2002 SCC 30, [2002] 2 S.C.R. 129, at para. 11; *Clouthier v. Co-Operators General Insurance Co.*, 2025 ONSC 6798 (Div. Ct.), at para. 59. It follows from this that the general rule governing the interpretation of insurance contracts, that "coverage provisions should be construed broadly," applies equally to insurance legislation: *Somersall v. Friedman*, 2002 SCC 59, [2002] 3 S.C.R. 109, at para. 47. (citing *Non-Marine Underwriters, Lloyd's of London v. Scalera,* 2000 SCC 24, [2000] 1 S.C.R. 551, at para. 70).

[24] The purpose of income replacement benefits governed by s. 5(1) is just that – to replace income that the insured is no longer able to receive because of the accident. As noted earlier, in the context of motor vehicle accidents, the no-fault automobile insurance regime has largely replaced common law tort law, the purpose of which is to restore a plaintiff to the position he or she would have been in but for the tortious conduct of the defendant: *Athey v. Leonati*, [1996] 3 S.C.R. 458, at para. 20.

(iii) The Appellant's Situation

[25] At the time of the motor vehicle accident, the appellant was a "worker" as defined in s. 2 of the *WSIA*, which includes not only a person employed under a contract of service, but also a student or a "learner." The payments he was receiving from the WSIB were not a form of charity or social assistance, but payments pursuant to s. 43(1) of the *WSIA* for "a loss of earnings as a result of an injury" in the form of benefits from a public insurance program into which he or an

employer had paid premiums. According to s. 43(3), the amount he received was contingent on his compliance with his WTP, which included his work at Cole. As the Tribunal accepted, the appellant was in an employment relationship with Cole. He received an income, not from Cole, but from the WSIB as compensation for a loss of earnings because of an injury.

[26] As a result of the automobile accident, the appellant is no longer in an employment relationship and he no longer receives the same income. As explained earlier, the purpose of the *SABS* is to cover economic losses and "reduce the economic dislocation and hardship" caused by the accident, including through income replacement. The source of the income is not what matters. What matters is that the appellant was in an employment relationship at the relevant time and receiving an income related to that employment. As a result of the automobile accident, he is no longer in an employment relationship and no longer receiving the income related to that employment. This is an employment-related economic loss resulting from the accident, which is exactly what the *SABS* is designed to compensate for.

(iv) Arab v. Unica Insurance

(a) The Decision

[27] *Arab*, on which the Tribunal relied, did not address the issue in this case. The appellant in that case had a job but stopped attending work on February 11, 2016. However, his employment was not formally terminated until November 30, 2016. He was involved in a motor vehicle accident on September 16, 2016. At the time, he was still in an employment relationship to the extent that his employment had not yet been formally terminated, but he was not attending work, nor was he being paid. The Tribunal concluded that he was not "employed" within the meaning of s. 5(1) of the *SABS*. This court agreed, at para. 29:

> Although the legislation does not define the term "employed", when the term is read in its ordinary grammatical sense and considered within the context of Part II of the Schedule it is clear and unambiguous that section 5(1) is not just about the existence of a formal employment relationship. Its purpose is to determine the eligibility to income replacement benefits with reference to the exchange of wages, salary, or other remuneration for services, over a defined period.

(b) The Basis for the Decision

[28] The Tribunal in this case placed great importance on the use of the word "exchanged" in the portion of *Arab* quoted above. However, the result in *Arab* did not turn on whether income or remuneration was "exchanged," but rather on whether it was *received.* The appellant in *Arab* did not receive any income from any source, unlike the appellant in this case.

[29] The basis for the result in *Arab* is clear from the court's reliance on a different Tribunal decision, *T.M. v Aviva General Insurance*, 2020 CanLII 45486 (ON LAT), referred to in para. 30, which involved facts similar to those in *Arab*. The Tribunal in that case concluded that the

applicant was not "employed" because of the manner in which income replacement benefits are calculated pursuant to s. 7 of the *SABS* (at paras. 19-20):

> T.M. was not receiving employment income or any benefits under the *Employment Insurance Act* at the time of the accident. T.M. at the time of this proceeding has remained on unpaid leave. There is no evidence of T.M. receiving employment income.
>
> Based on the aforementioned reasons, …I find the decision would lead to an absurd result for T.M. That being, T.M. is "employed", but is entitled to $0 under the IRB.

This court's subsequent application of *Arab* in *Nouracham v. Aviva General Insurance Co.*, 2024 ONSC 2415 also makes it clear that it was the *receipt* of income, rather than whether it was the result of an "exchange," that matters. In that case, the court affirmed the Tribunal's conclusion that the applicant was not "employed" because "the accident did not occur *during a period when the applicant was receiving remuneration for services*. [Emphasis added]": *Nouracham*, at para. 13.

[30] The applicants in *Arab, T.M.* and *Nouracham* were not "employed" and eligible for income replacement benefits because at the relevant time, *they had no income to replace*. The result in those cases was consistent with the purpose of the legislative scheme as none of the applicants had established an employment-related economic loss *because of the accident*.

(c) Obiter Dictum

[31] *Arab* explains that the term "employed" in s. 5(1) of the *SABS* refers to situations where there is an employment relationship and employment-related income that the applicant no longer receives because of a motor vehicle accident. The result in *Arab* would have been the same if the court had not used the word "exchanged." The word was, in effect, an *obiter dictum.*

[32] While the Tribunal was correct that *Arab* was binding on it, this does not mean that the definition of "employed" in that case should be transposed, word-for-word, to this case without regard to differences in facts and issues between the two cases. Yet this is what the Tribunal did, contrary to what was stated by Binnie J. in *R. v. Henry*, 20025 SCC 76, [2005] 3 S.C.R. 609, at para. 57:

> The notion that each phrase in a judgment of this Court should be treated as if enacted in a statute is not supported by the cases and is inconsistent with the basic fundamental principle that the common law develops by experience.

See also *Canada (Attorney General) v. Power*, 2024 SCC 26, 494 D.L.R. (4th) 191, at para. 343; *R. v. Hajivasilis*, 2013 ONCA 27, 114 O.R. (3d) 337, at paras. 20-21.

(v) What the Appellant Would Have Received

[33] The Tribunal placed significant reliance on the fact that the appellant likely would have received the same loss of earnings benefits if he had only attended school and had not worked at Cole. This might have mattered if "employed" within the meaning of s. 5(1) of the *SABS* required that the appellant's income be the result of an "exchange," which, for the reasons I have outlined, it does not.

[34] Regardless of what the appellant would have received by way of loss of wage benefits if he had not been in an employment relationship, the fact is that he was in an employment relationship. What might have happened but did not was of no relevance to the issue the Tribunal had to consider. A young person employed in the family business would be no less eligible for benefits because her family might have supported her financially even if she did not work.

D. Conclusion

[35] As noted earlier, "[a] n appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just": *Piekut*, at para. 49. In my view, interpreting the term "employed" in the context of s. 5(1) of the *SABS* as requiring an employment relationship and the receipt of employment-related income meets these requirements.

[36] The interpretation is plausible and complies with the legislative text. In this regard, it is noteworthy that the definition of the term "employee" in s. 1(1) of the *Employment Standards Act* includes "a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer's employees," which would include the appellant. While the *ESA* and the *SABS* may not be strictly speaking *in pari materia*, comparing uses among different statutes is nonetheless an established statutory interpretation tool: Sullivan, at §13.01, 13.08.

[37] The interpretation is efficacious in that it promotes the legislative intent behind the *SABS* of compensating a loss of income resulting from an automobile accident.

[38] Finally, the outcome is reasonable and just. The appellant was receiving WSIB benefits not by choice, but because he was the victim of a workplace accident. Had he not been, he would in all likelihood have been employed and entitlement to income replacement benefits would not have been in question. The appellant sought "earning replacement benefits" to compensate for a loss of "wage loss benefits," because through a series of misfortunes, he was unable to continue working because of two different types of accidents. He sought to rely on two types of insurance to which he would otherwise be entitled for compensation. Denying benefits essentially because a person has the misfortune of being the victim of both a workplace and an automobile accident is neither reasonable nor just.

[39] For these reasons, I have concluded that the Tribunal erred in law in concluding that the appellant was not "employed" within the meaning of s. 5(1) of the *SABS*. I am also of the view that the Tribunal's decision was unreasonable.

III. DISPOSITION

[40] The appeal is allowed and the application for judicial review is granted. The Tribunal's decision, dated November 28, 2024, and reconsideration decision, dated April 23, 2025, are set aside and the matter is remitted to the Tribunal before a different adjudicator for a hearing on all issues in accordance with these reasons.

[41] As agreed to by the parties, the respondent shall pay the appellant costs in the amount of $16,600.00, inclusive of disbursements and GST.

_____
Schreck J.

I agree. _____
Backhouse J.

I agree. _____
Fregeau J.

Released: March 31, 2026

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