CITATION: Jones-Whyte v. Intact Insurance Company, 2026 ONSC 1927
DIVISIONAL COURT FILE NO.: 428/25 and 760/25
DATE: 20260413

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SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: JENNIFER JONES-WHYTE, Appellant/Applicant

AND:

INTACT INSURANCE COMPANY, Respondent

BEFORE: Matheson, LeMay and Schreck JJ.

COUNSEL: *John Philp*, for the Appellant/Applicant

Sabina Arulampalam and Shivani Mehta, for the Respondent

Jesse Boyce, for the Licence Appeal Tribunal

HEARD: March 31, 2026, in Toronto

ENDORSEMENT

[1] Jennifer Jones-Whyte[1] appeals and seeks judicial review of the decision of the Licence Appeal Tribunal (LAT) dated January 7, 2025 (the Decision), and the reconsideration decision dated May 1, 2025. The LAT found that the appellant had failed to establish catastrophic impairment under Criterion 8 of the *Statutory Accident Benefits Schedule* (*SABS*), O. Reg 34/10, s. 3.1(1)(8).

[2] The issues before the LAT were ultimately two – whether the appellant had a marked impairment in activities of daily living (ADL) and in concentration, pace and persistence (CPP). The extent of impairment in the other areas of functioning was not in dispute. Further, for ADL and CPP, the experts agreed that there was some impairment. The issue was whether it was a moderate or a marked impairment.

[3] In this appeal/application, the appellant raises these issues:

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[1] Referred to as the appellant in the rest of this endorsement for readability.

(i) whether it was procedurally unfair to impose time limits on the oral examination of the appellant's witnesses;

(ii) whether it was procedurally unfair to permit one line of questioning in the respondent's psychiatrist's testimony, while not doing the same for the appellant's expert, and to admit the recent surveillance report; and,

(iii) whether the LAT applied the correct legal test for a Criterion 8 impairment.

[4] The standard of review for procedural fairness and errors of law is correctness: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220.

[5] Beginning with procedural fairness, there is no issue that the LAT has the authority to control its process and that its procedural choices are relevant to the determination of whether the process was fair: *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. s. 25.0.1; *Licence Appeal Tribunal Rules*, r. 3.2; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para. 27.

[6] As this Court has said in another decision regarding the LAT: "Tribunals are owed considerable deference on their procedural decisions. This is because administrative tribunals have the experience and expertise to balance handling the need to ensure fair participation for all parties with the prompt determination of proceedings on their merits": *Jendrika v. Intact Insurance Company*, 2025 ONSC 652 (Div. Ct.), at paras. 26-27.

[7] In this matter, there was a LAT case conference in May 2024 regarding the hearing. The issues were identified, witness lists were discussed, and a schedule was set for the exchange of documents and other materials. A five-day hearing was set for the hearing based on that information. As noted in the Case Conference report and order, the parties were encouraged to agree on a timetable for an efficient hearing, while noting that the timetable for testimony was subject to the hearing adjudicator's discretion.

[8] At the outset of the hearing in October 2024, most of the issues were withdrawn and the appellant's counsel indicated that he would be calling fewer witnesses because some of them were redundant. The parties put forward an agreed timetable for the remaining witnesses.

[9] After discussion, the Adjudicator reduced the time requested for the appellant's examination in chief from 5 hours to 1½ hours, with 1½ hours for cross-examination and ¼ hour for redirect examination. The Adjudicator also set the time for the appellant's sister's evidence (totaling 2¼ hours) and set time limits for the expert witnesses for both sides. During the hearing, the Adjudicator also increased the time allocated to experts for their testimony.

[10] The transcript shows that when setting the time limits for the witnesses at the outset of the hearing, the Adjudicator had regard for the case conference directions, the length of time set for the hearing, the reduction of the matters at issue, the nature of the remaining issues, the reduction in the witness list, her view of the length of time that was needed for each witness, and the submissions of counsel for the parties. For the experts, the Adjudicator also took into account the

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agreement that the lengthy expert reports were being admitted as evidence. The Adjudicator was entitled to apply her expertise regarding what time should be needed and did so.

[11] The Adjudicator did apply the time limits very precisely as the examinations progressed, but the hearing transcript of the appellants' evidence does not show an unfairness in doing so. Further, the Adjudicator's extension of time for the experts shows that she was reflecting on the time limits as the evidence unfolded. This case is unlike *Plante v. Economical Insurance Company*, 2024 ONSC 7171 (Div. Ct.), where the hearing was drastically reduced from 20 days to 5 without any change in the nature of the case, and the applicant in that case was unable to call several of her witnesses. In contrast, the Adjudicator here heard from everyone and extended the time for certain witnesses. Further, the initial hearing length of five days was set when there were several more issues and witnesses. We conclude that the time limits were not procedurally unfair.

[12] The appellant also submits that a procedural unfairness arose from the examinations of the psychiatric experts, Drs. Gnam and Eisen. Dr. Gnam was put forward by the appellant and Dr. Eisen was put forward by the respondent.

[13] Dr. Gnam's report was dated in June 2022. Dr. Eisen's report and addendum report were about a year later, in November 2023, and Dr. Eisen relied on considerable material after the date of the Gnam report including Dr. Eisen's own assessment of the appellant in June 2023. Dr. Eisen included Dr. Gnam's report among the materials that he reviewed in reaching his opinion. Although there was time to do so, no addendum report was delivered by Dr. Gnam after Dr. Eisen's reports.

[14] Due to the times that each expert was available, Dr. Eisen testified first. During his examination in chief, Dr. Eisen was asked to comment on Dr. Gnam's report, which he had reviewed in preparation of his reports. Dr. Eisen began his response by noting that Dr. Gnam's report was from 2022, saying that a lot had changed in the subsequent year. This answer gave rise to an objection. The appellant's counsel objected because Dr. Eisen had not included a detailed critique of Dr. Gnam's report in his reports. After hearing from counsel, the Adjudicator permitted Dr. Eisen to comment because he had reviewed Dr. Gnam's report in preparation of his own. The Adjudicator said she would assign the appropriate weight. However, she did not permit Dr. Gnam to comment on Dr. Eisen's reports, because he had not reviewed them to prepare his own report and there was no addendum report from Dr. Gnam after delivery of the Eisen reports. The appellant submits that these rulings were procedurally unfair.

[15] First, these rulings must be considered in context. Dr. Gnam had not reviewed the Eisen reports in reaching his opinion while Dr. Eisen had done so. Further, some of the comments from Dr. Eisen were apparent on the record (such as the time that had passed since Dr. Gnam's report and the additional evidence that he had reviewed as a result). And the appellant could have delivered an addendum report from Dr. Gnam based on a review of the Eisen reports and did not do so. As it was, Dr. Gnam's opinion was as of his report in 2022 and without a review of the later reports. In these circumstances, the rulings were consistent with the LAT process regarding the production of expert reports prior to hearing, upon which the experts rendered their opinions.

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[16] The ruling was also subject to the Adjudicator assigning the appropriate weight in view of what was considerable other evidence, including from these experts. The appellant submits that this is not relevant because the reasons do not expressly say whether that evidence was given weight. We disagree. It is not necessary for reasons for decision to mention every piece of evidence and how it was addressed.

[17] Here, the Adjudicator gave extensive reasons for the decision about the evidence of these two experts, showing what she found significant. The Adjudicator discussed the evidence at length including these and other experts, as well as evidence from the appellant and other experts. It is apparent from the reasons that this small component of Dr. Eisen's evidence did not turn out to be central to the Decision.

[18] Although not pursued to the same degree in this Court, and not raised on the reconsideration, the appellant also challenges the Adjudicator's ruling that a second surveillance report could be used even though it was late. It was served about a month before the hearing rather than 75 days. The Adjudicator noted that it could not have been provided by the 75-day deadline since it was not done at that time. The Adjudicator noted that the appellant had more than a month to review it, including with the appellant's expert witnesses. The respondent had not yet shown it to any of its witnesses. The Adjudicator ruled that it could be introduced into evidence and put to the appellant but not the experts on either side.

[19] We conclude that the above issues did not result in procedural unfairness. The Adjudicator was entitled to manage the timetable and her timetable was balanced and within her discretion. Further, the evidentiary ruling about the expert examinations was grounded in the LAT process for expert reports and the surveillance was also handled fairly, with neither side's experts commenting on that surveillance, only the appellant.

[20] The appellant then submits that the Adjudicator erred in law by applying the incorrect test for a Criterion 8 impairment. However, the appellant does not point to any error in the applicable legal principles as set out in the reasons for decision. The appellant submits that the correct test was stated but was misapplied.

[21] The appellant submits that the Adjudicator was obliged to do a qualitative analysis of the appellant's functioning pre- and post-accident and failed to do so. However, the reasons for the Decision do recount what the appellant could do before the accident as compared to her current limitations. Further, the appellant has not provided legal authority that this is a mandatory legal requirement. This Court's decision in *Wilson v. Intact Insurance Company*, 2025 ONSC 5305, at para. 46, suggests otherwise. In the context of a reasonableness review, the Court concluded that not establishing a baseline prior to the accident did not render the decision unreasonable.

[22] The appellant also provided the recent LAT decision in *MacLeod v. Intact Insurance*, 2026 ONLAT 25-002123/AABS, describing it as an illustration of how this should work. Yet *MacLeod* does not state a legal principle in conflict with the Decision in this case.

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[23] The other submissions on this issue amount to requesting that this Court reweigh the evidence, which would require showing palpable and overriding error on the appeal or unreasonableness on the judicial review, neither of which are shown here.

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[24] The appeal and application are therefore dismissed, with costs in the agreed amount of $5,000, all inclusive.

Matheson J.

LeMay J.

Schreck J.

Date: April 13, 2026

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