CITATION: Clouthier v. Co-Operators General Insurance, 2025 ONSC 6798
DIVISIONAL COURT FILE NO.: 093/25 & 101/25
DC-25-000000101-0000
DATE: 20251205

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

R. Lococo, S. Nakatsuru, M. Kurz JJ.

BETWEEN:	
SUMMER CLOUTHIER by her Guardian, THE PUBLIC GUARDIAN AND TRUSTEE Appellant/Applicant	*Alexander M. Voudouris, Tanner Blomme,* Counsel for the Appellant/Applicant
- and -	
CO-OPERATORS GENERAL INSURANCE COMPANY Respondent	*Eric K. Grossman, Suzanne Clarke, Alexander Dos Reis,* Counsel for the Respondent
- and –	
ONTARIO TRIAL LAWYERS ASSOCIATION Intervenor	*Lianne J. Brown, Gerry Antman,* Counsel for the Intervenor
- and –	
LICENCE APPEAL TRIBUNAL Intervenor/Respondent	*Gün Köleoğlu*, Counsel for the Intervenor/ Respondent **HEARD at Toronto:** October 30, 2025

REASONS FOR DECISION

S. Nakatsuru J.

A. OVERVIEW

[1] Summer Clouthier was struck by a car while riding a bicycle in February 2020, rendering her incapable of making medical decisions for a significant period of time. She signed the required form for non-earner benefits under s. 36 of the *Statutory Accident Benefits Schedule – Effective September 1, 2010,* O. Reg. 34/10 ("*SABS"*) on July 8, 2020. It was only after submitting the form that she received non-earner benefits from the respondent insurance company.

[2] The start date for the non-earner benefits was most unsatisfactory to her.

[3] Ms. Clouthier applied to the Licence Appeal Tribunal (the "Tribunal") to receive non-earner benefits from March 12, 2020, through to July 7, 2020. During that interval, she was physically and mentally incapable of signing the required forms. Ms. Clouthier argued that s. 36(3) of the *SABS*, which requires the form to be submitted to receive non-earner benefits, should be read to exclude incapable persons. In the alternative, if the subsection captured her circumstances, then it was contrary to s. 15 of the *Canadian Charter of Rights and Freedoms* and s. 1 of the *Human Rights Code*, R.S.O. 1990, c. H.19.

[4] The LAT denied this application and affirmed its decision on reconsideration (collectively, "the Decision").

[5] Ms. Clouthier appeals and seeks judicial review of the Decision.

[6] For the following reasons, the appeal is allowed. Consequently, the judicial review application need not be determined.

[7] The proper interpretation of the legislative scheme supports Ms. Clouthier's position. It is not necessary to deal with the constitutional and human rights arguments. The matter is remitted back to the LAT for a rehearing.

B. FACTUAL BACKGROUND

[8] Ms. Clouthier, a 42-year-old single woman, was riding her bicycle on February 14, 2020, when she was struck by a car going about 50 km/hr. She was thrown over the hood of the car and struck her head. Airlifted to the Guelph General Hospital, she was diagnosed with multiple injuries including a traumatic brain injury, skull fractures of the right frontal bone and left occipital bone, facial fractures, pelvic fractures, subdural and subarachnoid hemorrhage, and small bowel intussusception.

[9] At the hospital, Ms. Clouthier had a diminished level of consciousness, was unresponsive, and had to be intubated. When she regained consciousness, she exhibited behaviour consistent with a traumatic brain injury including decreased insight, severe cognitive impairments, agitation, restlessness, confusion, and aggressive behaviour.

[10] Her behavioral impairments were so bad that she became suicidal. On February 27, 2020, she was placed under a Form 1 pursuant to s. 15(1) of the *Mental Health Act,* R.S.O 1990, c. M.7. At certain points of her stay, Ms. Clouthier was placed under restraints and several times between February to May 2020, hospital staff had to respond urgently to her violent behaviour. For example, on February 27, 2020, Ms. Clouthier was banging her head against the floor and threatening to kill herself. On March 8, 2020, she was hearing voices telling her to leave her hospital room. She

threatened a nurse and threw a stethoscope. On April 10, 2020, she was screaming, threatening to punch nursing staff, and throwing things on the floor. On April 29, 2020, she threw things off the medical cart in the hallway.

[11] On May 11, 2020, Ms. Clouthier escaped from the hospital and was found by a nurse who saw her walking onto the street in front of traffic. On August 22, 2020, Ms. Clouthier climbed a fence to escape the hospital. She was found by hospital staff and brought back.

[12] Throughout her hospital stay spanning from February 14 to November 6, 2020, Ms. Clouthier's treatment providers considered her incapable of making decisions with respect to her care. In order to provide her treatment, the treatment team obtained consent from Ms. Clouthier's mother.

[13] During her hospital stay, the COVID-19 pandemic's initial outbreak occurred. Ms. Clouthier was not allowed to have any visitors, including her mother.

[14] On or about June 25, 2020, Ms. Clouthier's mother retained a law firm. On June 30, 2020, an application for accident benefits (a form labelled OCF-1) was made to the respondent insurance company. On July 8, 2020, a disability certificate (a form labelled OCF-3) was completed and submitted on Ms. Clouthier's behalf.

[15] Once the respondent received her OCF-3, it accepted that Ms. Clouthier was entitled to non-earner benefits and began funding these benefits effective July 8, 2020, until February 10, 2022, which corresponded to the maximum amount of time she was entitled to these benefits pursuant to s. 12(3) of the *SABS*.

[16] On September 28, 2020, and again on November 1, 2020, a capacity assessment was conducted. These assessments revealed that Ms. Clouthier lacked capacity and required a statutory guardian. On November 2, 2021, the Office of the Public Guardian and Trustee declared Ms. Clouthier to be incompetent and issued a certificate to become her statutory guardian.

[17] On April 24, 2023, a capacity assessor reviewed Ms. Clouthier's medical documentation from February 14 to September 28, 2020, and opined that during this time, Ms. Clouthier was unlikely to have been capable of making decisions with respect to the completion and submission of insurance forms.

C. THE LAT DECISION DATED DECEMBER 30, 2024

[18] Vice-Chair Mazerolle of the Tribunal held that Ms. Clouthier was not entitled to the specified benefit, the non-earner benefit, for the period of March 12, 2020 to July 7, 2020 because Ms. Clouthier had failed to provide a disability certificate at any point prior to July 8, 2020 and, pursuant to s. 36(3) of the *SABS*, an applicant who fails to submit a completed disability certificate is not entitled to a specified benefit for any period before the completed disability certificate is submitted. The Tribunal denied Ms. Clouthier's application, holding that s. 36(3) of the *SABS* did not exclude incapable persons from complying with that requirement.

[19] In its decision, the Tribunal accepted that the interpretation of the *SABS* had to be guided by the modern principles of statutory interpretation, which it reviewed. The Tribunal acknowledged that the *SABS* has a consumer protection mandate, should be given a large and liberal interpretation in a manner that promotes protections afforded to persons with disabilities, and that Ms. Clouthier had suffered severe injuries. However, the Tribunal went on to hold that s. 36(3) had clear wording that did not create an exception for incapable persons and that to create such an exception would run contrary to the intent of the legislature when creating the *SABS*.

[20] The Tribunal then held that Ms. Clouthier had not provided a sufficient basis to challenge the constitutionality of s. 36(3) as she had merely served the notice of constitutional question as required by the LAT's procedural rules and did not make submissions on the caselaw governing s. 15 of the *Charter*. It made the same finding with respect to the *Human Rights Code* arguments.

[21] Finally, the Tribunal addressed Ms. Clouthier's other arguments, including her argument regarding the application of s. 34 of the *SABS* and her request for relief from forfeiture, which the Tribunal dismissed on the basis that they had been raised for the first time in reply, and therefore, the respondent did not have a chance to respond.

D. THE RECONSIDERATION DECISION DATED APRIL 29, 2025

[22] Ms. Clouthier applied for reconsideration. Adjudicator Mazerolle affirmed his previous decision.

[23] On the interpretation of s. 36(3), the Tribunal found that Ms. Clouthier's submissions were largely an attempt to re-litigate the position she took at the initial written hearing and that she failed to identify any error that could have changed the outcome of the decision.

[24] On the *Charter* and *Human Rights Code* arguments, the Tribunal found that Ms. Clouthier made further submissions involving the s. 15 *Charter* jurisprudence on reconsideration, but this was improper as reconsideration is not meant to bolster a case that failed at first instance. It also found that there was no error in declining to address these arguments at first instance because there was an insufficient basis to conduct such an analysis.

[25] Regarding s. 34, the Tribunal accepted that in its decision of April 29, 2025, it had resorted to s. 34 as a provision to interpret s. 36(3). However, it refused to permit Ms. Clouthier to rely upon this argument, again reiterating its reason that the section had only been referred to in reply.

E. JURISDICTION AND THE STANDARD OF REVIEW

[26] The LAT's final decisions under the *Insurance Act*, R.S.O. 1990, c. I.8 can be appealed to this Court under s. 11 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, on a question of law alone.

[27] The standard of review on this statutory appeal is set out in *Housen v. Nikolaisen,* 2002 SCC 33, [2002] 2 S.C.R. 235. Errors of law are reviewed on a correctness standard: *Housen*, at para. 8.

[28] No dispute arises that since the resolution of this appeal centers on the interpretation of specific provisions of a regulation - a question of law and one of significant importance - it falls within the scope of the statutory appeal and therefore the standard of review is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 36-38; *International Air Transport Assn. v. Canada (Transportation Agency)*, 2024 SCC 30, 496 D.L.R. (4th) 385, at para. 25; *Hussein v. Intact Insurance Co.*, 2025 ONSC 842 (Div. Ct.), at para. 21.

F. THE ISSUES

[29] Ms. Clouthier raises four issues and has also sought relief from forfeiture in her reply factum. The four issues raised are:

(i) Whether the Tribunal erred in its interpretation and application of s. 36(3) of the *SABS*;

(ii) Whether the Tribunal erred in failing to conduct any *Charter* or *Human Rights Code* analysis;

(iii) Whether s. 36(3) of the *SABS* violates s. 15 of the *Charter* or the *Human Rights Code*; and,

(iv) Whether the Tribunal erred in its interpretation and application of s. 34 of the *SABS.*

[30] I find that it is only necessary to deal with the last issue regarding s. 34.

[31] I am mindful that although s. 34 was raised by Ms. Clouthier at both the written hearing and the reconsideration, the Tribunal did not expressly deal with it. I find that it erred in that failure. It was incumbent upon the Tribunal to determine whether s. 34 had any application to Ms. Clouthier's circumstances.

[32] On this appeal, the respondent is prepared to deal with the issue of the interpretation of s. 34, its applicability, and has made submissions regarding it. It has not raised any objection to it being entertained.

[33] I find it appropriate to consider this ground at this hearing. The failure of the Tribunal to consider it more fully will be relevant to the disposition.

G. ANALYSIS

The Approach to Statutory Interpretation

[34] The modern rule of statutory interpretation requires that the words of a statute 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 Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, citing Elmer A. Driedger, *Construction of Statutes, 2nd ed.* (Toronto: Butterworths, 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 29.

[35] The goal of the interpretive exercise "is to find harmony between the words of the statute and the intended object": *R. v. Breault,* 2023 SCC 9, 481 D.L.R. (4th) 195, at para. 26, quoting *MediaQMI Inc. v. Kamel*, 2021 SCC 23, [2021] 1 S.C.R. 899, at para. 39.

[36] That recognized, the text's ordinary meaning must still anchor 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, 498 D.L.R. (4th) 316, at para. 24.

[37] This approach applies whether the entity interpreting the law is a court or an administrative decision maker: *Vavilov*, at para. 118.

[38] Recently, the Court of Appeal for Ontario summarized this well-known approach to

statutory interpretation in *Reference re iGaming Ontario*, 2025 ONCA 770, at paras. 135-142.

The Relevant Regulatory Framework

[39] Together, the *Insurance Act* and the *SABS* codify Ontario's no-fault accident benefits regime. This regime requires that every automobile insurance policy in Ontario provides its holder with access to certain benefits in the event of a motor vehicle accident, regardless of fault. To that end, every automobile insurance policy in Ontario is deemed, pursuant to s. 268(1) of the *Insurance Act*, to include the benefits provided in the *SABS*. Those who are injured in a motor vehicle accident may then claim the *SABS's* benefits from their insurer.

[40] Section 36 is found within Part VIII of the *SABS*, which is titled "Procedures for Claiming Benefits".

[41] Beginning with s. 32, the process to claim benefits commences with a person seeking to apply for a benefit notifying the insurer of their intention to do so, no later than seven days or as soon as practicable after that day, after the circumstances arose giving entitlement to the benefit. The insurer is then obliged to promptly provide the person with, amongst other things, the appropriate application forms. The provisions following s. 32 ensure the timely determination of the application.

[42] Sections 36 to 46 fill out the remainder of Part VIII and they specify the various benefits that a person may receive including income replacement benefits, non-earner benefits, medical or rehabilitation benefits, and attendant care benefits and the particulars required to obtain them.

[43] Sections 36 and 37 deal with a "specified benefit" which means an income replacement benefit, non-earner benefit, caregiver benefit, or a payment for housekeeping or home maintenance services.

[44] Non-earner benefit is defined in s. 12 and provides a payment of $185 a week under certain conditions to an insured person who suffers a complete inability to carry on a normal life as a result of and within 104-weeks of a motor vehicle accident and who does not qualify for income replacement benefits or was a student. One condition is that an insurer is not required to pay a non-earner benefit for the first four weeks after the onset of the complete inability to carry on a normal life.

[45] Subsection 36(2) requires an applicant for a specified benefit to submit a completed disability certificate with their application for benefits under s. 32. Subsection 3(1) defines a disability certificate to be:

> "disability certificate" means, in respect of a person, a certificate from a health practitioner of the person's choice that states the cause and nature of the person's impairment and contains an estimate of the duration of the disability in respect of which the person is making or has made an application for a benefit described in this Regulation

[46] The key provision under consideration on this appeal is s. 36(3), which states:

> 36(3) An applicant who fails to submit a completed disability certificate is not entitled to a specified benefit for any period before the completed disability certificate is submitted.

[47] The other key provision is s. 34. This states:

> 34. A person's failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation.

The Interpretation of s. 34 Applies to s. 36(3)

[48] Both provisions must be scrutinized carefully in order to determine the appropriate interpretation of these key provisions.

[49] The purpose of s. 36(3) must be read along with the other provisions in Part VIII. When that is done, I find that the purpose of the subsection is to assist in the receipt by the insurer of required information in a timely fashion in order to adjust the claim; in this case, a certification by a health practitioner. By denying a specified benefit for the period when an applicant fails to submit a completed disability certificate, this incentivizes the applicant to fully complete their application as quickly as reasonably possible to provide the insurer the opportunity to assess the claim close in time to the accident.

[50] The respondent submits that s. 36(3) is simply a precondition for eligibility. Subsection 36(3) does not specify a time limit for the submission of a disability certificate. This subsection simply establishes a coverage period for which an applicant would be entitled to a specified benefit. In other words, it merely confirms the requirements for coverage for specified benefits to advance such a claim. The respondent submits that its clear wording reflects the legislature's intent for this section.

[51] As such, the respondent argues that s. 34 does not apply to s. 36(3) since the latter does not involve any "time limit" as that term is found in s. 34. The respondent relies upon Tribunal decisions that have previously held that the compulsory consequences of s. 36(3) are not saved by the provisions of section 34. It is submitted that Ms. Clouthier is requesting that the court read in a condition to s. 36(3) by improperly rewriting the regulation.

[52] In my view, the fact that s. 36(3) does not provide for exceptions for a failure to meet the requirement of a disability certificate or make an explicit reference to a specific period of time is not determinative. Put another way, this is not by itself evidence of a clear legislative intent to invoke an absolute and rigid prohibition of payment of benefits prior to the submission of a disability certificate.

[53] The subsection must be viewed along with s. 34. The latter is a general provision that excuses compliance with "time limits." It expressly applies to all the provisions in Part VIII including s. 36. Moreover, it explicitly provides the very type of remedy that is at stake in a situation like this. That is, no disentitlement of a person to a benefit if they have a reasonable explanation.

[54] The term "time limit" is not defined in the *SABS*. However, the use of the term in the *SABS* is not confined to s. 34. In some subsections, the context of the use of the term "time limit" refers to a specific period of time such as a notice or a limitation period.[1] That said, s. 22(2) refers to a "time limit of a 104 weeks" after the accident for which reasonable and necessary expenses of certain persons visiting the insured person during treatment or recovery, is not applicable if the person

[1] Subsection 32(10) refers to a situation where despite "any shorter time limit in this Regulation", if an applicant fails to notify, without reasonable explanation, an insurer of an accident, the insurer could delay determination and payment of benefit for certain periods of time. Subsection 36(6) states where the insurer does not comply with "applicable time limits" regarding payment of specified benefits or alternative actions, the insurer is required to pay the benefit from a specified date. Section 56 provides a two-year limitation period for an application to the LAT to resolve a dispute. It is referred to as a "time limit" in the heading.

sustained a catastrophic impairment. This refers not to the passing of time before some action is required but a period of eligibility or a coverage period. Thus, the use of the term "time limit" in the *SABS* is not confined to a single meaning but depends upon the context of its use. This contextual analysis of the term's use in the *SABS* supports the broader interpretation of the term "time limit" within s. 34 than the one argued for by the respondent.

[55] Under the modern principle, the interpretation of a phrase in a statute must accord with the context of its use and the underlying purpose of the provision: *Lundin Mining Corp. v. Markowich*, 2025 SCC 39, at para. 69.

[56] The respondent relies upon authorities such as *R. v. A.A.*, 2015 ONCA 558, 327 C.C.C. (3d) 377, para. 68, citing with approval Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Toronto: LexisNexis, 2008), at p. 1 which holds that "legislatures use language carefully and consistently so that, unless the contrary appears, the same words have the same meaning within a statute and different words have different meanings". When it comes to the term "time limit", I find that the legislature uses it inconsistently in different parts of the *SABS*. Said differently, there is no single use of the term. Its meaning depends upon context.

[57] In my opinion, within the context of s. 34 as applied to s. 36(3), "time limit" as found in s. 34 refers to the "period before the completed disability certificate is submitted" as found in s. 36(3). This is effectively the "time limit" placed upon the eligibility for that benefit; similar to how the legislature used "time limit" in s. 22(2) in demarcating a coverage period.

[58] As submitted by the intervenor Ontario Trial Lawyers Association, s. 36(3) functions as a real-time disentitlement provision. It continuously denies benefits for every day a claimant fails to submit a disability certificate. Each day the form is not submitted is a day of permanently lost entitlement, even where, as in the case at bar, the claimant was medically eligible but incapable of compliance. Interpreting s. 36(3) as involving a "time limit" within the meaning of s. 34, is consistent with the wording found in the provisions and the context of the whole regulation.

[59] This interpretation is supported by the purposes of the *SABS*. A primary object of the *SABS* is consumer protection. In *Tomec v. Economical Mutual Insurance Company,* 2019 ONCA 882, 148 O.R. (3d) 438, at paras. 42-43, leave to appeal refused [2020] S.C.C.A. No. 7, citing with approval MacKinnon J.'s judgment in *Arts (Litigation Guardian of) v. State Farm Insurance Company* (2008), 91 O.R. (3d) 394 (S.C.), at p. 448, the Court of Appeal said "the *SABS* are remedial and constitute consumer protection legislation" and 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." See also *Smith v. Co-Operator's General Insurance Co.*, 2002 SCC 30, [2002] 2 S.C.R. 129, at para. 11.

[60] Section 34 is meant to be remedial and inclusive: *Tracy Adams v. Aviva Insurance Co.*, 2024 ONSC 715 (Div. Ct), at para. 21. The interpretation argued for by the respondent is restrictive and "[i]nstead of fostering fairness for people with the most health needs, it increases their suffering and economic hardship": *Kellerman-Bernard v. Unica Insurance Company*, 2023 ONSC 4423 (Div. Ct.), at para. 26.

[61] Given my views, I find the LAT authorities holding to the contrary like *Kunaseelan v. Aviva Insurance Company of Canada,* 2022 CanLII 11134 (ON LAT), at para. 21, unpersuasive.

[62] The respondent also submits that an absurdity would result if a claimant could wait until several months or years after an accident before submitting an OCF-3 for non-earner benefits or

income replacement benefits and yet still be reimbursed retroactively to the date of the accident, all the while robbing an insurer of its ability to, in real time, investigate the validity and causation of the claimant's self-reported impairments.

[63] The respondent submits that this would leave insurers in the impossible position of either (i) having to pay retroactive benefits blindly with no ability to undertake contemporaneous investigation or (ii) incurring the cost of all manner of expert assessments and underlying investigation on all claims, just in case one claimant eventually applies for a specified benefit. It argues that none of these options can be what the legislature intended and neither of these comply with the purpose of the *SABS*.

[64] Respectfully, the respondent's position ignores the requirement that a "reasonable explanation" be provided under s. 34. It will remain up to the insurer and ultimately the LAT to determine what a reasonable explanation is within the meaning of s. 34 as applied to s. 36(3). Certainly, it should permit the consideration of the legal incapacity of an applicant: *Van Galder v. Economical Mutual Insurance Company*, 2016 ONCA 804, 61 C.C.L.I. (5th) 41, at para. 96. But the concept of a "reasonable explanation" is broader than that. All the circumstances should be considered including what steps were taken to find a litigation guardian or a substitute decision-maker during this period of incapacity.

[65] This added flexibility permits consideration of what this Court has confirmed to be basic to the purposes of the *SABS.* As stated in *Dominion of Canada General Insurance Co. v. Ridi (Litigation guardian of)*, 2021 ONSC 3707, 79 M.V.R. (7th) 78 (Div. Ct), at para 29, aff'd 2022 ONCA 564, 474 D.L.R. (4th) 321, "[a]utomobile insurance is designed to be both fair and affordable…In other words, the statutory scheme specifically contemplates that insured persons may not be fully compensated for the costs associated with their care and rehabilitation as a result of their accident".

[66] This interpretation of these provisions is one that strikes the appropriate "balance that provides some speedy payment but, in company with, insurance rates that are not unreasonably high": *Malitskiy v. Unica Insurance Inc.*, 2021 ONSC 4603, 15 C.C.L.I. (6th) 281 (Div. Ct.), at para 42.

[67] While a disability certificate allows an insurer to substantively adjust the claim, s. 36(3)'s main purpose is to ensure the process of timely submission is met. Permitting the discretion to relieve those applicants who can provide a reasonable explanation under s. 34 will not impair the objectives of s. 36(3). To avoid the risk of being denied a period of benefits and because of the obvious needs of injured or disabled persons for financial support, the majority of applicants will still submit a disability certificate in a timely fashion and the insurer will not be prejudiced in adjusting a claim: *Tomec*, at paras. 53-54; *Van Galder,* at para. 95.

[68] In conclusion, the cohesive and harmonious interpretation of s. 34 is that of a safety valve to make sure a rigid adherence to the procedural requirements in claiming benefits based upon time, does not work an injustice in an individual case.[2] Indeed, this interpretation avoids an absurdity in the sense used in *Tomec*. In *Tomec*, a strict literal reading of the limitation period in the *SABS* under consideration conflicted with the underlying purpose and spirit of the *SABS*. The Court of Appeal's approach in *Tomec* interpreted the plain language of s. 56 of the *SABS* dealing with limitation periods to include the additional requirement of discoverability, something that was nowhere to be found in

[2] The appellant supports her position by referring to a hypothetical where a person is rendered comatose in a motor vehicle accident for more than two years who then wakes up paralyzed, brain injured, and unable to live a normal life. That person (if a person legally authorized to act on their behalf is not involved) could never make a claim for non-earner benefits because no specified benefit is payable before a disability certificate is completed, and non-earner benefits are only payable up to two years after the accident.

the *SABS*. The Court of Appeal's exercise in statutory interpretation to allow for the doctrine of discoverability avoided an absurdity, promoted the purpose and object of the *SABS*, and increased access to justice. Hourigan J.A. highlighted the contents of this principle of statutory interpretation that eschews absurdity in the following fashion (at para. 46):

> Statutes are to be interpreted in a manner that does not lead to absurd results. An interpretation is absurd if it "leads to ridiculous or frivolous consequences, if it is *extremely unreasonable or inequitable*, if it is illogical or incoherent, *or if it is incompatible with other provisions or with the object of the legislative enactment*": [*Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27, at para. 27]. [Emphasis added.]

[69] To deny a person specified benefits when they were medically incapacitated from submitting a disability certificate is more than simply "unfortunate" as the respondent describes it. It is manifestly and extremely unreasonable and inequitable. It is incompatible with the primary objective of the *SABS.* The legislature could not have intended such an absurd result.

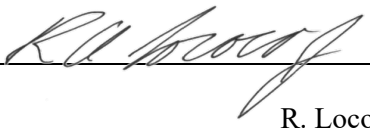
[70] And it did not. It enacted s. 34 to apply to the provisions found in Part VIII, including s. 36(3).

H. DISPOSITION

[71] The appeal is allowed. The matter is remitted to the LAT before a different adjudicator to determine with these reasons in mind if Ms. Clouthier has a reasonable explanation under s. 34 and whether she is entitled to further non-earner benefits.

[72] Further to the agreement between the parties, no costs are awarded.

S. Nakatsuru J.

I agree: 

R. Lococo J.

I agree: 

M. Kurz J.

Released: December 5, 2025

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Intervenor

- and -

LICENCE APPEAL TRIBUNAL

Respondent/Intervenor

REASONS FOR JUDGMENT

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