

CITATION: Chevalier-Wara v. Economical, 2026 ONSC 2982
DIVISIONAL COURT FILE NO.: 593/23
DATE: 20260525

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: KYLE CHEVALIER-WARA, Appellant

AND:

ECONOMICAL MUTUAL INSURANCE CO., Respondent

BEFORE: Backhouse, D.L. Corbett and Rees JJ.

COUNSEL: *Gregory C. Gilhooly*, for the Appellant

Martin Forget and Stephen Whibbs, for Economical Mutual

HEARD: November 27, 2025

ENDORSEMENT

D.L. Corbett J.

[1] This is an appeal from the decision of Adjudicator Fogarty of the License Appeal Tribunal (“LAT”) dated September 21, 2023 (2023 CanLII 87423 (ON LAT)) (the “Decision”), denying the Appellant’s application for designation under the *Statutory Accident Benefits Schedule* as “catastrophically impaired” and denying the Appellant’s claim for attendant care benefits (“ACBs”) and related relief.

[2] It is plain that the Tribunal’s reasons are inadequate. They are largely conclusory, rest in part on factual findings for which there is no evidence or for which the findings required considerable explanation and failed to account for the extensive expert evidence that is inconsistent with the Tribunal’s findings. In short, I would accept the submissions set out at paras. 14 and 16 of the Appellant’s Factum:

The decision of the Tribunal leaves the Appellant unable to understand why the overwhelming weight of medical opinion and evidence was rejected in favour of findings of fact that were made on assumptions about his abilities, with several of those assumptions having no evidentiary basis whatsoever.

....

The quality of the reasons dismissing his claim should meet the significance of the issue to the Appellant. More was required to explain to the Appellant why his claims were rejected.

Therefore, for the following reasons, I would quash the Decision and remit the case back to the LAT for a fresh hearing before a different Adjudicator on all issues.

Jurisdiction and Standard of Review

[3] This court has jurisdiction over this appeal pursuant to the *Licence Appeal Tribunal Act*, 1999, SO 1999, c. 12, Sched. G, s. 11 (the “LAT Act” or the “Act”) in respect to questions of law (Act, s. 11(6)). Questions of law are reviewable on a standard of correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 37. Sufficiency of reasons is a question of law: *R. v. Sheppard*, 2002 SCC 26, paras. 41-46; *Maple Ridge Community Management Ltd. v. Peel Condominium Corporation No. 231*, 2015 ONCA 5107, para. 22.

The Impugned Decision

[4] The impugned decision is 40 paragraphs long, set out over 11 pages (plus a title page).

[5] The first three paragraphs are appropriate background information. Paragraphs 4-7 address a procedural issue immaterial to this appeal. Paragraphs 8-10 set out the issues for the hearing as follows (**emphasis** in original):

Has the applicant sustained a **catastrophic impairment** under criteria 4 as defined by the Schedule due to his restrictions with work described by section 5b of the GOS-E Guideline?

Is the applicant entitled to **attendant care benefits** of \$1,671.62 per month from April 19, 2019 to date and ongoing?

Is the applicant entitled to **interest** on any overdue payment of benefits?

[6] Paragraphs 11-12 set out the result as follows:

The applicant is not catastrophically impaired.

I find that the applicant is not entitled to attendant care benefits; it follows that no interest is payable.

[7] In paragraphs 13-17, the Tribunal explains the factual issue contested by the parties, summarized at paragraph 16 as follows:

... whether the applicant should be rated a level 5 [on the GOS-E scale¹] with lower moderate disability (one year or more after the accident) or a level 6 with upper moderate disability. If found to be a level 5 the applicant would be entitled to a catastrophic impairment determination by the Tribunal.

[8] At paragraphs 18-21, the Tribunal explains the GOS-E scale and assessment, notes that the parties' assessors disagree on whether the applicant should be rated a level 5 or a level 6 respecting the applicant's ability to work and sets out descriptions of these two categories. The Tribunal then summarized the factual question for decision as follows (para. 22):

The question before me is very narrow: does the Applicant's traumatic brain injury ("TBI") result in his being unable to work, or only being able to work in a sheltered environment or non-competitive workplace? If I determine that the Applicant is able to work in a reduced capacity, then the Applicant will be rated 6... and not determined to be catastrophically impaired.

[9] Then, at para. 23, the Tribunal sets out the GOS-E guideline description of "work" (which runs for almost 2 pages). In para. 24, the Tribunal sets out the GOS-E guideline description of "reduced work capacity" (about 1.5 pages). In para. 25, the Tribunal sets out the GOS-E guideline description of "non-competitive work" (about 0.5 pages).

[10] After all of this, the Tribunal's entire analysis of the four days of testimony and the documentary evidence (including expert reports) on this critical issue is as follows (at para. 26):

To summarize, the applicant did not meet the burden to show he is only able to work in either a non-competitive role or sheltered workplace because he has been engaging in periodic work similar to his pre-accident employment since approximately February 2018. The information to Dr Pelletier shows at least one of these roles was paid a "very good" wage and was open to the public since he had to rearrange his schedule so as not to miss out on the opportunity. The applicant's testimony ran contrary to the documented evidence on the details of his post-accident employment and as such I did not find him to provide reliable testimony on this subject.

[11] This "analysis" includes the following findings of fact:

- (i) The applicant has been engaging in periodic work similar to his pre-accident employment since about February 2018;
- (ii) "at least one" of "these roles" was paid a "very good" wage and "was open to the public;"

¹ Glasgow Outcome Scale and the Extended Glasgow Outcome Scale.

- (iii) The applicant's evidence on these issues was not reliable because it "ran contrary to the documented evidence on the details of his post-accident employment."

[12] Since the Tribunal did not explain these findings, beyond stating them, one must review the entire record to determine if there is a basis for them. I note here that, although the Tribunal provided a helpful introduction, and a detailed analysis of the question it was required to answer, it provided no summary or analysis of the evidence related to the question it had to decide. From reading this portion of the decision, it would be impossible to understand what "work" the applicant had done post-accident, in what circumstances that work was done, what the applicant was paid for doing that work, how the applicant was supervised doing that work, how the applicant did at the work, or even the periods of time that the applicant worked. The "work" is characterised as having been done for friends or family members, and no analysis establishes that the Appellant's disabilities – which would not preclude him from the physical tasks involved in the described "work" – would not preclude him from an unsheltered employment situation.

[13] A tribunal has considerable discretion as to how much detail it provides in its reasoning. But it must be sufficient so that a reader (including a reviewing court) can understand the basis on which critical factual findings have been made without undertaking the very analysis of the record that the tribunal is supposed to do.

[14] In respect to the evidence that was before the tribunal:

- a. The Appellant called six witnesses: (i) the Appellant; (ii) the Appellant's mother; (iii) the Appellant's treating rehabilitation psychologist (Dr Pelletier); (iv) an expert occupational therapist (Ms Wilson); (v) a neuropsychologist (Dr Mendella); and (vi) a second neuropsychologist (Dr Sweet). Only the Appellant's evidence was mentioned in the Tribunal's reasons respecting catastrophic impairment, and that only in respect to the Tribunal's finding that his evidence was not reliable because of unspecified inconsistencies with unparticularized "documented evidence".
- b. Implicitly, the Tribunal rejected the expert neuropsychological opinion of Dr Mendella, including Dr Mendella's completed GOS-E scoring. The Tribunal may have accepted the opinion of the respondent's witness, Ms Evans, an occupational therapist, and Ms Evans' completed GOS-E scoring. If so, the Tribunal did not explain why it preferred the evidence of an occupational therapist (who was not qualified to provide this opinion under the *SABS*) to the opinion of Dr Mendella (who was qualified to give the opinion). The Tribunal did not explain why it rejected Dr Mendella's opinion, or why it did not find Dr Mendella's evidence respecting the "work" that could have been undertaken by the appellant to be less than persuasive.
- c. The medical evidence adduced by the Appellant strongly supported a designation in category 6 – it did not place the Appellant close to the line between 5 and 6. This evidence was not analysed in the Tribunal's reasons on this issue.

- d. The Appellant suffers from a serious brain injury. On the evidence before the Tribunal, effects of this injury are a basis to discount the Appellant's testimony, but not in the way that the Tribunal discounted it. Dr Mendella testified that one consequence of the Appellant's brain injury is that his subjective understanding of what he is able to do, and how well he is doing, is likely to be materially more positive than is objectively true. No mention is made of this important evidence, and no basis is given to discount or disregard it.
- e. Prior to the accident, the Appellant had been working as a carpenter and general construction labourer with a carpentry company. Since the accident, the Appellant had done some odd jobs, including removing some panelling at his aunt's house, and helping a couple of friends do some work around their own houses. The Appellant took up jiu jitsu, as a hobby, and after he had gained some proficiency in it, on a volunteer basis, he reported that he had volunteered to "train" or "teach" jiu jitsu to some children at his local club, where he himself was training. The Appellant's experts had this information put to them, and they explained why, in their view, it was not inconsistent with their view that the Appellant was unable to "work" at a reduced capacity except in a "sheltered" or "non-competitive" workplace. The Tribunal did not explain why it found the expert evidence unpersuasive on this issue and seems to have come to its own opinion on the extent of the Appellant's condition based on the Appellant's testimony rather than the medical evidence.

[15] The problem with the Tribunal's insufficiency of reasons on the issue of catastrophic impairment is compounded when its reasons for denying ACBs are considered. In that section of the reasons, the Tribunal found as follows:

The role as a jiu jitsu instructor really shows how well the applicant is doing. Teaching children requires a great deal of patience, planning, attention to detail and oversight. In my view it shows someone with a great deal of control over their executive functions to be able to accomplish this. He's managing time to ensure that lessons run on schedule, he's planning lessons as well as teaching activities, he's showing self-control by maintaining his composure with a group of children, he's paying attention because he's responsible for their wellbeing during the lessons and more. The responsibilities in this role run contrary to the applicant's experts finding that he's unable to rely on his executive functions due to his cognitive issues because not only is he trusted with his own safety, he's been entrusted with the safety of a bunch of young children as well. Someone who needs supervisory care would not be able to accomplish this task, nor should they be trusted to care for a group of small children.

[16] With respect, there was no evidence, whatsoever, to support many of the findings set out in the passage quoted above. In particular there is no evidence:

- a. that the Appellant did any "planning";

- b. that the Appellant had any “details” to which he had to “pay attention”;
- c. that the Appellant was delivering “lessons”;
- d. that the Appellant was “managing time” to meet a “schedule”;
- e. that the Appellant was “entrusted” with the “safety” of the children.

The Tribunal seems to have concluded that the Appellant was running the children’s program by himself, rather than “helping out” on a voluntary basis. That was not the Appellant’s evidence. No one from the jiu jitsu school testified to provide independent evidence about what the Appellant actually did, or who else was present during the course of the volunteer help provided by the Appellant. The Tribunal relied on the Appellant’s evidence, exclusively, to find that his volunteer work showed high performing executive functioning, despite the clear expert evidence and other medical evidence that the Appellant’s subjective account of his abilities would tend to be overstated and unreliable. When cross-examined on this issue, Dr Pelletier, a neuropsychologist with 35 years experience, who had treated the appellant for five years, opined that engagement in jiu jitsu and running (two activities pursued by the Appellant) was not inconsistent with a diagnosis of significant executive dysfunction (Transcript, Feb 2, 2023, p. 75 and following):

[These]... are activities that could be performed and pursued by people with the highest level of traumatic brain injury and that’s because the nature of the activity not demanding all of the skills and metacognitive skills that are required for things like driving.... It’s never surprising for me to hear people talk about success in something like jiu jitsu and try to, therefore, assume that could lead to success in another activity like being a teacher or something like that. And this is really unfortunate. It’s grossly unfortunate because it does show that, as a society, we’re just not there to appreciating that some people can look good on the outside and they are so destroyed on the inside. And this man is destroyed on the inside....

... this man’s successes and achievements in jiu jitsu and training really do not tell us a whole lot about the presence or absence of executive deficits. And that is because those are activities that are completed even when you have minimal level of executive function.

[17] Dr Pelletier also testified about the Appellant’s evidence that he was “teaching” jiu jitsu to children. In cross examination, Dr Pelletier testified:

Well, you know what? I’m not aware that he is training in a strictly literal sense. What I am aware of is that, in the caste system of the club, blue belts do work with white belts. But I think he is – would be supervised in what – by the black belts or brown belts in whatever he is doing with the white belts.

....

... it was a very good sign that he was starting to try out some new things and expand his horizon. From the point of view of therapeutic success in terms of skills and neurobehavioral issues, I could never comment on that because, for all I know, he is actually doing very little when he actually interacts with these children. And I frankly can't imagine him doing any meaningful teaching. He would be one of the last people I would send my children to for instruction.... Because of my awareness of his limitations and his interpersonal deficits.

....

I certainly hear his self-report and I'm certainly pleased as his therapist that he feels he's getting something out of that and that he's moving forward. But when you're also – you know, the – when you're also keenly aware of how he interacts with children and what his limitations are, it just becomes a little harder for me to believe that there is a realistic success to that beyond his perception of that success.

[18] In respect to some of the odd jobs the Appellant did for friends and family, Dr Pelletier testified as follows:

... helping out his friends by holding up two-by-fours, that was great for him and he has benefited psychologically from that. But there would never have been a circumstance where I would be nudging him to go out and get employment. I mean, there's so many reasons for that the least of which is the clinical protocol that's involved when we are seriously trying to get somebody back into the workforce. It wouldn't look like that at all.

[19] This was a critical issue, with very serious consequences for the Appellant. With respect, the Appellant, and this court, are entitled to far more in the way of analysis, given the comprehensive record that was before the Tribunal.

[20] It appears that the insufficiency of reasons masks a superficial analysis of the evidence and a failure to engage with the extensive medical and expert evidence. The issue of catastrophic impairment was by far the most important issue before the Tribunal, and its errors in respect to this important issue undermines confidence in the rest of the decision: I consider it entirely unsafe.

Disposition

[21] I would grant the appeal, set aside the impugned decision entirely, and remit the case back to the LAT for a fresh hearing before a different Adjudicator. Given how long this matter has been outstanding, and how important it is to the Appellant, I would direct the LAT to give the fresh hearing scheduling priority. I would order that the respondent insurer pay costs of the appeal to the Appellant in the agreed amount of \$5,000.00, inclusive, payable within 30 days; there shall be no costs for or against the LAT.


D.L. Corbett J.

I agree: 
Backhouse J.

I agree: _____
Rees J.

Released: May 25, 2026

