

## Darren Schmidt - Neuropsychology

[https://members.cpo.on.ca/public\\_register/show/21702](https://members.cpo.on.ca/public_register/show/21702)

Dr. Darren Schmidt has agreed to the following [Terms, Conditions and Limitations](#) on his certificate of registration:

That Dr. Schmidt will not accept or perform any clinical assessments, including but not limited to: psychological, neurocognitive, neuropsychological and catastrophic impairment assessments, except under the following conditions:

- That he will only conduct any assessments under the guidance and support of a Peer Supervisor;
- Prior to commencing any assessment, he will consult with the Peer Supervisor to discuss the case and review the assessment plan, including the list of documents to review, the chosen test battery, and the proposed interview structure for the assessment; and
- The Peer Supervisor will review and co-sign all reports produced from the completed assessments.

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**Ontario (College of Psychologists of Ontario) v. Schmidt**, 2021 ONCPD 2 (CanLII), <https://canlii.ca/t/jhwvt>

2. Upon the request of counsel for the College, without objection by the member or his counsel, the Panel ordered that the name of Dr. Schmidt's client not be published or broadcast, pursuant to subsection 3 of section 45 of the Health Professions Procedural Code.

5. It is jointly submitted that in light of the above, Dr. Schmidt engaged in the following professional misconduct:

(a) Dr. Schmidt failed to maintain the standards of the profession with respect to services rendered to Ms. LC, in particular standard 2.1 (General Conduct).

6. Based upon the admission by Dr. Schmidt to the allegation of professional misconduct and the Agreed Statement of Facts, the Discipline Committee Panel found Dr. Schmidt guilty of professional misconduct.

7. Not every error, or any single error in a report necessarily amounts to professional misconduct because it necessarily renders the report one that falls below the standards of practice. However, multiple and significant errors coupled with unclear writing and spelling and grammatical errors may have the cumulative effect of rendering the report below the standard of practice expected of the profession with regard to report writing, especially when the report may have significant consequences for the client. This is such a case.

10. The following terms, conditions and limitation will be entered on Dr. Schmidt Certificate of Registration:

1. For a period of nine (9) months, Dr. Schmidt will cease accepting and performing clinical assessments (“Assessments”), including but not limited to: psychological, neurocognitive, neuropsychological and catastrophic assessments, except under the following conditions:

a. Dr. Schmidt will only conduct Assessments under the guidance and support of his current Peer Supervisor, Dr. Diana Garcia (“Peer Supervisor”);

b. Prior to starting an Assessment, Dr. Schmidt will consult with the Peer Supervisor in order to discuss the case and review the Assessment plan, including the list of documents to review, the chosen test battery, and proposed interview structure for the Assessment;

c. The Peer Supervisor will review and co-sign all reports that Dr. Schmidt produces from completed Assessments.

2. Dr. Schmidt will notify clients that their files will be reviewed by the Peer Supervisor for the purposes of quality assurance/improvement.

3. The Peer Supervisor shall be provided with the decision and reasons of the Discipline Panel for the discipline hearing held on August 25, 2021. The College may also provide the Peer Supervisor with any other relevant previous conduct history.

4. The Peer Supervisor shall provide the Registrar with a report every three months briefly summarizing the supervisory activities and updating the Registrar with regard to Dr. Schmidt’s progress in relation to performing Assessments.

5. In addition to the reports referred to in paragraph four, the Peer Supervisor may contact the Registrar or the Registrar’s designate, and the Registrar or the Registrar’s designate may contact the Peer Supervisor at any time to discuss any matter relevant to the Peer Supervisor’s duties.

6. Dr. Schmidt shall be solely responsible for payment of all costs associate with the Peer Supervisor.

7. Any variation of the above terms, conditions and limitations will only be made on approval of the Registrar, such approval not to be unreasonably withheld.

#### REASONS FOR PENALTY:

11. The Panel considered that Dr. Schmidt’s report which contained internal inconsistencies and errors regarding verifiable and documented facts fell below the College’s standards of practice. The cumulative fact of this poorly written report and the importance of this type of report to the client can result in real and significant life consequences.

12. Dr. Schmidt's conduct also reflected poorly on the profession. The Panel concluded that the penalty expresses the seriousness of Dr. Schmidt's misconduct and affords him the opportunity to continue his professional career provided he take the necessary remedial steps. It seemed most appropriate for the order to be remedial in nature rather than punitive.

13. With regards to specific deterrents, this order requires that Dr. Schmidt be involved in a process of mentorship and supervision which provides a method of remediation ensuring that the public is protected. Further, the publication of the hearing and order acts as a general deterrent for members of the profession.

14. In accepting the joint penalty, the Panel recognized that Dr. Schmidt co-operated with the College and, in so doing, saved the parties several days of time and expense inherent in a contested hearing.

15. By agreement of the parties, Dr. Schmidt is ordered to pay Discipline Hearing costs in the amount of \$3,500, within 90 days of the date of the Order of the Discipline Committee which is dated August 25, 2021.

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**Yu. v. Allstate Insurance Company**-004020/AABS, 2021 CanLII 30856 (ON LAT), <<https://canlii.ca/t/jfcj3>

[25] Dr. D. Schmidt, neuropsychologist, conducted an insurer's examination with a report dated October 11, 2017. In that report, Dr. Schmidt advised that the applicant's test results showed a pattern of symptom exaggeration and had no recommendations from a neuropsychological perspective. However, Dr. Schmidt identified symptoms of psychological illness and recommended a psychological assessment.

[44] Although the psychological treatment plans dated May 5, 2017 and August 24, 2018 were approved prior to this hearing, I find that the respondent unreasonably withheld funding for them. The respondent denied funding for these treatment plans on the basis that it had previously approved a psychological assessment and that it had yet to receive the report from the approved assessment thus, according to the respondent, there was no compelling evidence in support of the treatment. However, there is no requirement for an insured to incur the cost of an approved section 25 assessment prior to submitting a plan for treatment under the same specialty. Further, the respondent's position on the latter plan fails to appreciate that, before Dr. Boucher's report dated October 11, 2017, it had possession of some of the applicant's counselling records from Dr. Payne and that Dr. Schmidt's IE report dated September 27, 2017 identified "evidence to support ongoing psychological disturbances".

[45] Pursuant to section 10 of *Regulation 664*, an applicant may be awarded up to 50% of the amounts withheld plus interest. Here, the respondent relied on the fact that the section 25 psychological assessment had not been incurred to deny funding for psychological treatment despite, in my opinion, having enough evidence to approve funding for psychological treatment. To me, an applicant should never be forced to incur costs against their funding limit in a situation where such expenses may not be necessary. However, the applicant must accept responsibility

for failing to produce counselling records in a timely manner and her decision to submit but refrain from incurring, withdrawing, or providing any explanation as to why the approved psychological assessment was never incurred. A report from that assessment would likely have provided a clearer picture of the applicant's psychological health and what treatment is required. Further, it is unclear when the applicant provided Dr. Payne's counselling records to the respondent. However, it appears the records were provided after the May 5, 2017 treatment plan was submitted but before the August 24, 2018 plan was submitted. For these reasons, I find the applicant is entitled to an award of 10% of the amounts withheld plus interest.

## CONCLUSION

[46] The physiotherapy treatment plan dated September 19, 2017 is reasonable and necessary. The applicant is entitled to payment for the incurred goods and services, plus interest pursuant to [section 51](#) of the [Schedule](#). If the applicant has not incurred the cost of the goods and services, she may do so, and the respondent is liable to pay for it once properly invoiced.

[47] I find the remaining benefits claimed are not reasonable and necessary for the applicant's accident-related injuries.

[48] The applicant is entitled to an award pursuant to section 10 of *Regulation 664* in the amount of 10% of the psychological treatment plans dated May 5, 2017 and August 24, 2018, which were resolved prior to this hearing, plus interest.

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**K.K. v Aviva General Insurance**, 2020 CanLII 87927 (ON LAT), <<https://canlii.ca/t/jblpg>

[1] The applicant is a fifty-three year old man who was involved in an automobile accident on March 24, 2016, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").<sup>[1]</sup> He was denied income replacement benefits and a medical benefit for physical therapy services by the respondent ("Aviva") and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").

[8] In his December 2016 assessment report, Aviva's neuropsychologist Dr. Darren Schmidt found the applicant to have an Adjustment Disorder Mixed Anxiety and Depressed Mood; and an Unspecified Depressive Disorder.<sup>[7]</sup> Dr. Schmidt recommended a three-month course of psychological therapy and a referral to a medical specialist to rule out insomnia. In its Explanation of Benefits letter terminating the applicant's IRB as of January 21, 2017 Aviva requested the applicant to submit a treatment plan for psychological therapy based on the recommendation of Dr. Schmidt. <sup>[8]</sup>

[33] Aviva was initially satisfied that the applicant qualified for IRBs but changed its mind based on the December 2016 Multidisciplinary report of orthopaedic surgeon Dr. Simon, neuropsychologist Dr. Schmidt and occupational therapist Ms. Nicholson and a surveillance report.<sup>[26]</sup>

[36] Dr. Schmidt's opinion that the applicant did not suffer a substantial inability to perform the tasks of his employment was based on his understanding that the applicant had returned to work. Dr. Schmidt's opinion gives no consideration to the fact that the applicant told him he had returned to work only two to three hours a day or how his psychological diagnosis impacted his ability to return to work full-time.

[58] For the reasons provided above I am satisfied that the applicant remained eligible for IRBs for the full 104-week period after the accident. I am of the view that Aviva ignored the applicant's psychological diagnosis when it terminated the benefits as of January 21, 2017. I am also of the view that Aviva again chose to ignore the applicant's diagnosis of psychological impairments when it terminated the benefits for a second time after receiving the September 14, 2017 Multi-disciplinary Assessment.[\[39\]](#)

[74] On the basis of the evidence of the applicant's ongoing psychological impairments and the evidence that he requires daily medications for his headaches and moods, I am satisfied on the balance of probabilities that the applicant suffers from a complete inability to engage in any employment or self-employment for which he is reasonably suited by education, training or experience. There is no evidence to show what employment or self-employment this 53-year old gentleman has the ability to do given his psychological impairments and the fact that he has not worked for over four years since the accident.

[87] If I find that Aviva unreasonably held or delayed payment of IRBs to the applicant, section 10 of *Ontario Regulation 664*[\[54\]](#) gives me the discretion, in addition to awarding the benefits and interest to which the applicant is entitled, to award a lump sum of up to 50 percent of the amount to which the applicant is entitled at the time of the award together with interest on all amount then owing to the applicant (including unpaid interest) at the rate of 2 per cent per month compounded monthly from the time the benefits first became payable under the *Schedule*.

[97] Insurers have an obligation to continue to adjust claims made under the *Schedule*. I find that Aviva unreasonably refused to pay IRBs to the applicant in the face of the solid evidence that the applicant suffered serious psychological impairments as a result of the accident.

[98] Aviva never posed the question to any of its IE assessors who completed assessments more than 104 weeks after the accident if the applicant met the requirement for ongoing IRB benefits.

[99] For the reasons provided above I am satisfied on the balance of probabilities that Aviva unreasonably withheld payment of the IRBs claimed.

[100] O. Reg. 664 allows me to order a lump sum award of up to 50% of the income replacement benefits found to be owing. The applicant asks for 50%. Aviva made no submissions on the percentage.

[101] I am satisfied that 50% is appropriate in this case because of Aviva's actions in essentially completely ignoring the fact that the applicant suffered psychological impairments in adjusting the claim.

[89] Aviva submits that because the applicant is not entitled to the benefits claimed they were not unreasonably withheld or denied. Aviva submits that even if the benefits are payable an insurer is not held to a standard of perfection and an award is not made anytime a claimant succeeds at a hearing.

[90] In the LAT reconsideration decision of *F.P. v. Pilot Insurance Company* (“*Pilot*”) Executive Chair Linda Lamoureux found the determination of whether benefits have been unreasonably withheld requires looking beyond the reasonableness of the insured’s conduct in seeking benefits, whether the adjudicator agrees with the insurer’s conduct or even whether the adjudicator finds the insurer’s decision to be wrong. [55] Rather, she found it entails an assessment whether the insurer exceed the limits of what is reasonable. In *Pilot*, the Executive Chair found the adjudicator did not address the issue of whether the insurer’s conduct in withholding the benefits was unreasonable. I am persuaded by the reasoning of the Executive Chair in *Pilot*.

[91] I am satisfied on the balance of probabilities that the applicant is entitled to a lump sum award on the income replacement benefits he is entitled to. I find the applicant’s claim for IRBs was unreasonably denied for the following reasons:

- i. Aviva failed in its ongoing adjustment of the claim to give recognition to the fact that the applicant suffered psychological impairments in the accident despite its own assessors diagnosing the applicant with psychological impairments.
- ii. Aviva failed to recognize the severity of the psychological impairment. despite the comments of its own assessors. Well over three years after the accident, Aviva approved a plan for further psychotherapy and did not reconsider whether the applicant was entitled to ongoing IRBs.[56]

[92] When Aviva terminated the applicant’s IRBs as of January 21, 2017, it accepted Dr. Schmidt’s incorrect conclusion that the applicant had returned to work full-time. Aviva relied on the surveillance report of Norman Lalonde Investigations without considering the fact that the majority of the income the applicant received from September 15 to January 21, 2017 was from the rental of the taxi cab as opposed to the applicant driving the cab himself.

[96] Most strikingly, Aviva failed to recognize the June 2019 IE assessment of Dr. Corbin diagnosing the applicant with post-traumatic stress disorder. Dr. Corbin noted the relative severity of Mr. [K]’s psychological difficulties and found that likely that he was not yet at maximum medical improvement.

[97] Insurers have an obligation to continue to adjust claims made under the *Schedule*. I find that Aviva unreasonably refused to pay IRBs to the applicant in the face of the solid evidence that the applicant suffered serious psychological impairments as a result of the accident

[98] Aviva never posed the question to any of its IE assessors who completed assessments more than 104 weeks after the accident if the applicant met the requirement for ongoing IRB benefits.

[99] For the reasons provided above I am satisfied on the balance of probabilities that Aviva unreasonably withheld payment of the IRBs claimed.

[100] O. Reg. 664 allows me to order a lump sum award of up to 50% of the income replacement benefits found to be owing. The applicant asks for 50%. Aviva made no submissions on the percentage.

[101] I am satisfied that 50% is appropriate in this case because of Aviva's actions in essentially completely ignoring the fact that the applicant suffered psychological impairments in adjusting the claim.

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**M.L. v Primmum Insurance Company**, 2020 CanLII 80283 (ON LAT), <<https://canlii.ca/t/jb7qp>

[9] Further, the applicant challenged the credibility of the respondent's neuropsychological expert, Dr. Darren Schmidt. Specifically, she submitted that his opinion displayed bias, such that his assessment of her functional capacity cannot be accepted as an accurate representation of her post-accident condition.

[60] This long period of recovery has been cited by Dr. Schmidt as a reason to question the connection between the accident and this condition. That is, since Dr. Mendella did not diagnose the applicant with Somatic Symptom Disorder until 2016, Dr. Schmidt suggested that her present condition might be unrelated to the 2012 accident (because a traumatic brain injury would not take that long to heal).

[61] I do not accept this line of reasoning. Beyond Dr. Marshall's opinion that the accident was directly related to her present symptoms, Dr. Mendella opined that the applicant's pre-accident concussions could explain the persistence of her impairments. Further, Dr. Mendella stated that longstanding pain can affect cognition on an ongoing basis, which I take to mean that, while a head injury could be largely resolved, residual pain may have lasting, functional effects.

[62] Dr. Schmidt also questioned whether the applicant actually suffered a head injury during the 2012 accident. Specifically, he raised a number of concerns in his reports about the information that was used to diagnose her with a mild traumatic brain injury. I do not share these concerns.

[63] In addition to the near unanimous opinion among the experts that the applicant suffered from some form of a head injury from the accident, I am not swayed by the issues raised by Dr. Schmidt. That is, while the missing information he highlighted would have been helpful, it would be unreasonable to expect the applicant to provide the best possible forms of information to her healthcare providers before she could merit such a diagnosis.

[95] I do note that this impairment rating is where I diverge the most from the rating provided by Dr. Schmidt. I feel confident in disregarding his finding of a Class 1 impairment, because the basis of his opinion appears to ignore the drops he observed in his testing, as well as the difficulties noted by the other member of his assessment team. Instead, he placed inordinate weight on the applicant's ability to drive, which I do not find compelling enough—on its own—to disregard the rest of the evidence before me. Dr. Schmidt also noted during cross-examination that, save for his observation that she drove to his office, he lacked any details about the applicant's post-accident, driving practices (e.g., whether she drove at night or not).

#### *Dr. Schmidt's Testimony and Alleged Bias*

[126] I would like to take a moment to address a contentious part of the hearing. During the initial stages of Dr. Schmidt's cross-examination, counsel for the applicant raised questions about this assessor's training in catastrophic impairment assessment. During this back-and-forth, Dr. Schmidt provided an answer that was called into question by documentary evidence tendered by applicant's counsel.

[127] Though I have not placed significant weight one way or the other on this part of Dr. Schmidt's testimony, I still find it necessary to address this interaction in my decision. If I did not highlight this moment, it could appear as though I was not considering this expert's evidence in a fulsome manner. I can assure the parties that this is not the case. Rather, I have determined that the applicant has suffered a catastrophic impairment, and that Dr. Schmidt's observations and test results can be incorporated into this overall conclusion—even if his impairment ratings are at odds with these findings.

[128] It is for this same reason that I do not then find it necessary to address the applicant's argument about Dr. Schmidt's alleged bias. That is, whether I conclude that his opinion displays bias or not, this determination is immaterial. I have concluded that the evidence from both parties establishes that the applicant has suffered a catastrophic impairment, and so finding fault in this expert's perspective is not of import at this time.

#### **CONCLUSION**

[131] By suffering a Class 4 impairment in at least one of the four domains of human activity described in the *Guide*, I find that the applicant suffered a catastrophic impairment as a result of the April 12, 2012 accident. This designation applies as of October 19, 2016.

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**Applicant v Portage La Prairie Mutual Insurance Company**, 2019 CanLII 101649 (ON LAT), <<https://canlii.ca/t/j33x1>>

[15] Multiple neuropsychological assessments were performed by Dr. Schmidt. I do not find the reports of Dr. Schmidt to be compelling and grant them little weight. They are inconsistent with the medical records documenting the applicant's injuries and impairments. Dr. Schmidt concluded that the applicant's test scores were invalid, however the neuropsychologist who performed the catastrophic assessment on behalf of the respondent -- Dr. Wiseman -- reviewed Dr. Schmidt's test data and determined that the scores were within valid ranges.



[19] Accordingly, a new neuropsychological assessment took place in June 2018.<sup>[7]</sup> Dr. Schmidt again concluded in his June 26, 2018 report that he had “no objective data to support that [the applicant] currently suffers a complete inability to carry on a normal life as a result of the accident from a neuropsychological perspective”. Dr. Schmidt again found that the quality of the testing was impacted by the applicant’s “performance and symptom exaggeration”. Given the lack of reliable and valid testing data, Dr. Schmidt determined that he could not make any recommendations.

[20] In the fall of 2018, the applicant underwent assessments on behalf of the respondent to determine if he had sustained a catastrophic impairment as a result of the accident.<sup>[8]</sup> Assessments were performed by an occupational therapist, Ms. Nicholson, and a neuropsychologist, Dr. Wiseman. The respondent’s assessors determined that the applicant was catastrophically impaired per criteria 4 – brain impairment. Dr. Wiseman concluded that the applicant’s level of brain-related cognitive impairment was compatible with Lower Moderate Disability (5) per the Extended Glasgow Outcome Scale (“GOS-E”) at one year or more post-accident.<sup>[9]</sup>

[21] As part of her assessment, Dr. Wiseman reviewed the April 2017 report prepared by Dr. Schmidt as well as his testing data. She noted that Dr. Schmidt had included a symptom validity test although it would only be relevant to psychological data, because symptom validity and cognitive performance validity are independent constructs.<sup>[10]</sup> Further she disagreed that the validity testing revealed evidence of malingering or symptom exaggeration. Upon her review of Dr. Schmidt’s data, she found that the applicant’s scores were acceptable.

[22] Dr. Wiseman also reviewed Dr. Schmidt’s June 2018 report and data. She disagreed with his opinion regarding symptom validity indicator and noted that the applicant’s scores were within the cut-off range. Dr. Wiseman noted that Dr. Schmidt misinterpreted the validity measures as indicative of symptom exaggeration. Dr. Wiseman noted that on both occasions that Dr. Schmidt assessed the applicant, he “administered only one performance validity test and cognitive screening measures that are an inadequate basis on which to make any meaningful conclusion about cognition or cognition related disability”.

[23] I accept the conclusions and recommendations of Dr. Wiseman and Ms. Nicholson. I find Dr. Wiseman’s assessment much more comprehensive than Dr. Schmidt’s. Dr. Wiseman and Ms. Nicholson’s conclusions are also consistent with the findings and recommendations of the applicant’s rehabilitation team.

[24] In contrast to Dr. Schmidt, Dr. Wiseman found that the applicant actually tended to under-report difficulties, not maximize them.<sup>[11]</sup> Dr. Wiseman diagnosed a Major Neurocognitive Impairment due to traumatic brain injury with behaviour change (disinhibition and impulsivity). She also found evidence of anosognosia – a neurological diagnosis which means that the applicant has poor awareness of his deficits. He lacks insight into his injuries and the need for intervention, or “buying into” treatments that that would improve his prognosis and community reintegration. Based on her findings and the occupational therapy assessment, Dr. Wiseman concluded:

*It is unlikely that [the applicant] is capable of work at this time. His social activities have been disrupted and there is evidence of relationship strain due to his irritability and brain injury related behaviour changes. In addition, it is not clear that [he] is able to stay at home and be safe for up to eight hours at a time, due to his impulsivity, distractibility and poor judgement. Using the GOS-E metric, this is in keeping with at least lower moderate disability, and perhaps an even greater level of disability at more than two years post-accident. His GOS-E score is therefore 5 or less.*

[74] In this case, I find that the respondent acted unreasonably when it denied benefits to the applicant based on the conclusions of its section 44 assessors. The reports of Dr. Schmidt determined that there was some impairment, it was suspected to be exaggerated, and the data was found to be invalid. However, I find that the respondent ignored other medical information available to it in maintaining its denial, including the respondent's own catastrophic assessment reports. I find that after receiving the report of Dr. Wiseman in which she concludes that Dr. Schmidt's interpretation of the data was incorrect – the scores fell within a valid range – and given her conclusions about the applicant's level of impairment, the respondent acted unreasonably in continuing to deny the applicant's claim for non-earner benefits. The respondent has an ongoing obligation to consider new information as it becomes available and reconsider its prior determinations.

[75] The respondent called no witnesses to testify at the hearing, but forced the applicant to proceed to a four day in-person hearing despite the conclusions of its own catastrophic assessors which challenged the conclusions of the assessors the respondent relied upon in refusing to pay the benefits. I find this conduct amounts to unreasonable behaviour by an insurer in withholding or delaying payments, which can be seen as excessive, imprudent, stubborn, inflexible, unyielding or immoderate.

[76] The quantum of a special award should be proportionate to: (i) the blameworthiness of the respondent's conduct; (ii) the vulnerability of the applicant; (iii) the harm or potential harm directed at the applicant; (iv) the need for deterrence; (v) the advantage wrongfully gained by the insurer from the misconduct; and (vi) should take into account any other penalties or sanctions that have been or likely will be imposed on the insurer due to its misconduct.<sup>[28]</sup> The Tribunal has added a seventh factor, being the overall length of the delay.<sup>[29]</sup>

[77] I have considered the amount of benefits withheld from the applicant, and the length of time that payment has been withheld. I have also taken into account the applicant's vulnerability given his brain injury, and dependence on others. The respondent should have taken a second look at the evidence prior to the hearing, however, the catastrophic assessment reports were received only a few days prior to the hearing. Considering these factors, I find that the appropriate quantum is 40% of the amount to which the applicant is entitled for the disputed benefits, plus interest in accordance with the *Schedule*. I leave the calculation of the exact amount of the award and interest to the parties – given that the parties agreed that the quantum of benefits is not to be determined by the Tribunal in this hearing. If there is disagreement in the calculation of this amount, either party may contact the Tribunal to schedule a case conference with me within 30 days of the release of this decision.

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**17-002366 v Coachman Insurance Company**, 2019 CanLII 34601 (ON LAT),  
<<https://canlii.ca/t/hzxfp>>

[21] The respondent relied on the IE reports of Dr. Fox, Dr. Schmidt, a neuropsychologist, and Dr. Tilak Mendis, a neurologist, to deny the applicant was entitled to IRBs after March 24, 2017.<sup>[14]</sup> The respondent relies on Dr. Schmidt's testimony and reports as support that the applicant is exaggerating his cognitive complaints. The respondent submits that the applicant's reports at his EUO and to various assessors about his daily activities, his ability to work at a computer screen, his ability to focus and concentrate on his work, the effect of the pain from his headaches and the aggravating factors of physical exercise and working on a computer screen are contradicted by the surveillance videos of the applicant, photos of him apparently working at GZP<sup>[15]</sup> and the invalid neuropsychological test results from Dr. Schmidt's assessment of the applicant.

[22] Dr. Schmidt conducted an IE assessment of the applicant on February 24, 2017. Dr. Schmidt administered tests to the applicant that indicate whether he gave a valid effort on the tests. Based on those test results, Dr. Schmidt reported and testified that the applicant was quite likely attempting to be viewed as more impaired than he actually was. Dr. Schmidt testified that he stopped the testing after two and a half hours because he expected any further neuropsychological test results to also be invalid. Dr. Schmidt admitted on cross-examination that headaches and the use of Amitriptyline may affect validity scores. However, they did not do so in the applicant's case, because there was no indication that the applicant had a headache or any complaints from the Amitriptyline during the assessment.

[23] The applicant asks that I give little weight to Dr. Schmidt's evidence. The applicant relies on the testimony and reports of Dr. Stewart. She was provided with a copy of Dr. Schmidt's raw test data from his assessment of the applicant. Dr. Stewart was critical of the type of tests administered by Dr. Schmidt, although she admitted she was not very familiar with one of the tests. She thought that Dr. Schmidt should have administered more tests, rather than shutting down the assessment at the time that he did. She also claimed that a mild traumatic brain injury can affect the validity of the tests. Dr. Schmidt completely disagreed because on one of the tests, people with traumatic brain injuries have been found to do better than people who do not have traumatic brain injuries. I do not give much weight to Dr. Stewart's critique of Dr. Schmidt for the following reasons.

[27] The medical records and Dr. Mendis are consistent in finding the applicant sustained a concussion in the accident<sup>[17]</sup>. Dr. Schmidt, however, testified that he disagreed with the diagnosis of concussion or mild traumatic brain injury because Dr. Mendis made his diagnosis without reviewing a CT scan or MRI scan. Dr. Mendis reported on March 10, 2017 that at his November 29, 2016 assessment,<sup>[18]</sup> the applicant's symptoms included post-traumatic headaches and he showed evidence of an ocular motor dysfunction.<sup>[19]</sup> I have no reason to doubt Dr. Mendis' diagnosis. Especially since Dr. Schmidt testified that he was not qualified to comment on the applicant's headaches and that he was unaware that the applicant was prescribed Amitriptyline for his headaches. Dr. Schmidt also testified that he was not qualified to talk about

ocular motor dysfunction, but that it could have something to do with a head injury and could affect the applicant's vision. Further, the applicant displayed a slow response on the only test that he administered that is conducted on a computer, which is keeping with the applicant's complaints of being unable to work on a computer for a sustained period.

[72] The applicant is claiming for the cost of a neuropsychological assessment in the amount of \$2,000.00 plus a psychometric assessment in the amount of \$1,346.49, recommended in treatment plan (OCF-3) prepared by Dr. Stewart dated October 21, 2016. <sup>[65]</sup> The respondent denied the treatment plan, relying on the IE report of Dr. Schmidt dated March 10, 2017. <sup>[66]</sup> Dr. Schmidt's opinion was that there was no neuropsychological diagnosis and, therefore, the proposed neurocognitive assessment was not required.

[73] Under s.25(1)3 of the *Schedule*, the respondent is required to pay for the reasonable fees charged by a health practitioner, in this case a neuropsychologist, for reviewing and approving a treatment and assessment plan including any assessment or examination necessary for that purpose. The test for entitlement to the cost of an examination does not require the applicant to prove that he has a cognitive impairment caused by the accident. It is whether there is a possibility that he has a cognitive impairment caused by the accident.

[74] I find the assessment was necessary. The applicant was diagnosed with a traumatic brain injury by both Dr. Sitwell and Dr. Mendis. Although Dr. Schmidt may have found that there was no neuropsychological diagnosis, the fact that the applicant had to undergo a neuropsychological assessment for Dr. Schmidt to reach that conclusion supports my determination. Further, Dr. Mendis' recommendation that the applicant undergo a neuropsychological assessment and the diagnosis of concussion also supports my finding that a neuropsychological assessment was necessary to determine whether or not the applicant's cognitive complaints were related to the accident and, if so whether they required treatment.

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**M.A. v. Portage La Prairie Mutual Insurance Company**, 2003 CanLII 89425 (ON LAT), <<https://canlii.ca/t/jfchq>

[23] The respondent received the catastrophic impairment reports on December 20, 2018 and the Schedule requires that the reports be provided to the applicant within 10 business days. The respondent submits that even if it had not thoroughly considered the catastrophic assessment report (which it denies), that it should not be penalized because it only had a day to consider and analyze the report. This is a mischaracterization. The hearing commenced on January 8, 2019. The respondent had 10 business days to consider the reports prior to the hearing. That should have been enough time to recognize that its own assessor had called into question the expert reports on which they relied to deny the benefits. Specifically, that Dr. Schmidt had determined that the results of testing were invalid, and that the applicant was exaggerating his symptoms. Dr. Wiseman reviewed Dr. Schmidt's data and concluded that he was incorrect, and the applicant's scores were valid, and the validity testing did not reveal evidence of malingering or symptom exaggeration. I would expect that 10 days certainly would suffice to consider a report with such significant conclusions that directly address the disputed benefits.

[24] At paragraph 75, the Tribunal held:

The respondent called no witnesses to testify at the hearing but forced the applicant to proceed to a four day in-person hearing despite the conclusions of its own catastrophic assessors which challenged the conclusions of the assessors the respondent relied upon in refusing to pay the benefits.

[25] The respondent submits that it was an error for the Tribunal to conclude that an award was appropriate on the basis that it “forced” the applicant to a hearing. The respondent submits that it did not “force” the applicant to do anything, that calling no witnesses is not grounds for granting an award, nor was the format of the hearing.

[26] The Tribunal made no error. The Respondent unreasonably denied the applicant’s benefits, which required the applicant to proceed with a four-day in-person hearing. The Tribunal was not criticizing the type of hearing. The Tribunal was criticizing the unreasonable denial of benefits which made the hearing necessary.