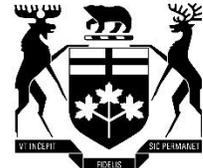


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Ontario

RECONSIDERATION DECISION

Before: Jonathan Batty, Associate Chair

Date: September 27, 2019

File: 17-006174/AABS

Case Name: Michael Beaudin v. Travelers Insurance Company of Canada

Written Submissions by:

For the Applicant: Peter Cho and Gurjiwan S. Brar, Counsel

For the Respondent: Daniel Strigberger, Counsel

OVERVIEW

1. This Request for Reconsideration was filed by Michael Beaudin, the insured in this matter, following a decision from the Tribunal dated October 17, 2018 regarding a preliminary motion that determined he was not eligible to receive any accident benefits. He sought accident benefits in connection with injuries he sustained while driving a dirt bike in a closed course competition in Courtland, Ontario.
2. Mr. Beaudin submits that the Tribunal has erred in law and seeks an order reversing the Tribunal's decision.
3. Pursuant to s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5, I have been delegated responsibility to decide this matter in accordance with the applicable rules of the Tribunal.

RESULT

4. For the reasons I set out below, I grant Mr. Beaudin's Request for Reconsideration.
5. The Tribunal erred in its interpretation of the relevant statutes and regulations. I find that Mr. Beaudin is not excluded from obtaining benefits from his insurer.

BACKGROUND

6. Mr. Beaudin is a 32 year old man who lives in Hamilton, Ontario. Prior to 2017, he purchased comprehensive motor vehicle liability insurance from Travelers Insurance.
7. The material facts about Mr. Beaudin's injuries are clear. On July 9, 2017 he was driving a motorcycle, specifically a "dirt bike", at a closed course motocross competition at Gopher Dunes in Courtland, Ontario. During a race, he was catastrophically injured and is now a paraplegic.
8. As a result of his injuries Mr. Beaudin applied to Travelers Insurance for accident benefits under his policy, which it denied. Travelers is denying his claim because it says there is an exclusion that applies – specifically that the injuries occurred while the insured was driving in a closed course motocross competition in Ontario.

9. As explained by the parties in their submissions, closed course motocross competitions are similar to motorcycle rallies in that they are competitive events where motorcycles are driven and the participants are scored for their performance in the competition. However, rallies take place on public highways. Closed course competitions do not. They are held in places like racetracks and motosport parks.
10. As the hearing submissions of the respondent explain¹, the Courtland, Ontario event was the fifth in a series of ten events held at venues across Canada in the summer of 2017. Each event venue would host a number of different races that day.
11. The dates, places, and venues for the events were as follows:

	DATE	VENUE/LOCATION
1.	June 4, 2017	Whispering Pines Raceway, Kamloops, B.C.
2.	June 11, 2017	Blackwater MX Track, Prince George, B.C.
3.	June 18, 2017	Wild Rose MX Park, Calgary, Alberta
4.	June 25, 2017	Moto Valley Raceway, Regina, Saskatchewan
5.	July 9, 2017	Gopher Dunes, Courtland, Ontario
6.	July 16, 2017	Motocross Bon Conseil, Notre Dame du Bon-Conseil, Quebec
7.	July 23, 2017	Pleasant Valley Motosport Park, Truro, Nova Scotia
8.	July 30, 2017	Riverglade MX Park, Moncton, New Brunswick
9.	August 6, 2017	Motocross Deschambault, Deschambault, Quebec
10.	August 13, 2017	RJ Motosport Park, Barrie, Ontario

12. Like all the other venues listed, the Gopher Dunes event at Courtland, Ontario was a closed course competition. Courtland is located in southwestern Ontario near Tilsonburg.
13. Competitors were required to obtain a licence from Canadian Motosport Racing Corporation (CMRC) to participate in the series; the licensing fee was \$123.89 plus tax. The licensing application and fee could be submitted: (1) online using the CMRC website; (2) by downloading it and submitting it by email or mail to CMRC; or, (3) by giving it to the CMRC regional organization running the event

¹ See generally the Respondent's Hearing Submissions Brief, Tabs 1 to 9, as reference for details in respect of paragraphs 10, 11, 13 to 17.

(which would issue a temporary licence number) and then would forward the application and fee to CMRC.

14. Of the licensing fee for \$123.00: \$43.89 was used to cover CMRC's administrative costs; \$40.00 went towards the licensee's region; \$30.00 was used to cover the premium for a \$25,000 Accidental Death and Dismemberment Policy; and, \$10.00 covered a magazine subscription to MXP Magazine. The \$40.00 that went towards the licensee's region was used to support the CMRC recognized organization in that region and its costs for staff, banquets, prizing, and other unspecified items.
15. In addition to paying a licensing fee to participate in the series, competitors were charged other fees to participate in a particular event. A gate fee was charged to enter the venue and entry fees were charged for each race in which the competitor drove.
16. It is not clear from the record whether or not Mr. Beaudin competed in all, some, or none of the four events held in western Canada before he was injured. It is also not clear how many races he drove in at Gopher Dunes that day.
17. We do know some of the details of the entities said to be involved in the event held in Courtland, Ontario:
 - 1) This event was part of a series called the Rockstar Energy Motocross Nationals. Rockstar Energy Drink presumably obtained publicity for its product by sponsoring this event.
 - 2) This event was organized by Stallybrass Promotions Inc. A principal of that company, Jan Stallybrass, was called to testify at the hearing by the respondent. Ms. Stallybrass was also a director of CMRC.
 - 3) This event was sanctioned or sponsored by CMRC, which is a for-profit corporation with share capital and shareholders that is registered in the Province of Ontario. CMRC recognized a number of different organizations across Canada for running the regional events making up the series. For Northern Ontario, the organization was "Superior Dirt Riders". In Central Ontario no organization was named but a person named Randy Hall was named as a contact. In Southwestern Ontario, no organization was named and no contact name was given. People who wished to contact the CMRC regional organization for southwestern Ontario were directed to info@cmrcracing.com or the telephone number for the CMRC head office.

- 4) The Alberta Motorcycle Sport Association (AMSA) was named as one of CMRC's two regional organizations for Alberta, specifically for southern Alberta's 403 telephone area code.

STATUTORY FRAMEWORK

18. This matter turns on the correct interpretation and application of the statutory framework governing automobile insurance in Ontario.
19. All Ontario drivers must be insured under a motor vehicle liability policy in accordance with the requirements of the *Insurance Act*, R.S.O., 1990, c. I.8. This requirement applies if they are driving vehicles on Ontario's public highways pursuant to s. 2(1) of the *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25 and it applies if they are driving off-road vehicles operated off-road in Ontario pursuant to s. 15(1) of the *Off-Road Vehicles Act*, R.S.O. 1990, c. O.4. However, there are exceptions to these statutory requirements.
20. For purposes of this matter, there is no dispute that Mr. Beaudin was driving off-road in Ontario and that any exceptions to the general requirement to maintain insurance would only relate to the provisions in the *Off-Road Vehicles Act*.
21. The *Off-Road Vehicles Act* specifies how it applies to a variety of vehicles, establishes rules governing the issuance and use of permits and plates, and includes offence provisions if drivers do not comply with its requirements. Most significantly for this case, the Act imposes a requirement that drivers of off-road vehicles obtain a motor vehicle liability policy (s. 15 as noted above). The only exception to this, in the statute itself, is that such a policy is not required where the vehicle is driven on land occupied by the owner of the vehicle (s. 15(9)). Like many statutes, it includes a regulation making power.
22. Ontario Regulation 863 made under the *Off-Road Vehicles Act* includes further exclusions to the general requirement to maintain insurance. As this regulation is pivotal in this matter, I have included the relevant provisions in their entirety in the following excerpt:
 1. In this Regulation,
 - "dune buggy" means a self-propelled vehicle with four or more wheels that has been manufactured or modified for off-road use but does not include an amphibious vehicle with six or more wheels;
 - "motorcycle association" means a motorcycle club or association that has or is affiliated with a motorcycle club or association that has a published constitution and a membership roster of more than twenty-four persons;
 - "road-building machine" has the same meaning as in the *Highway Traffic Act*,

“self-propelled implement of husbandry” means a self-propelled vehicle manufactured, designed, redesigned, converted or reconstructed for a specific use in farming and used for farming purposes;

“wheelchair” means a chair mounted on wheels propelled or driven otherwise than by muscular power and used for the carriage of a person who has a physical defect or disability.

2. (1) The following are designated as classes of vehicles that are exempt from the provisions of the Act and this Regulation:
 1. Golf carts.
 2. Road-building machines.
 3. Self-propelled implements of husbandry.
 4. Wheelchairs.
 5. Off-road vehicles driven or exhibited at a closed course competition or rally sponsored by a motorcycle association.

23. This is a dispute as to whether Mr. Beaudin is entitled to benefits under the Schedule. To be entitled, he has to have been injured in an “accident” while driving an “automobile”. The Schedule is a regulation under the *Insurance Act*.

24. The *Off-Road Vehicles Act* does not contain a definition of “automobile” but as noted above s. 15 generally requires all drivers of off-road vehicles to be insured under a motor vehicle liability policy. The issue in this reconsideration is how s. 2(1) 5 in Ontario Regulation 863 is to be read and applied in this. In other words, does the provision treat Mr. Beaudin’s dirt bike as an “automobile” and thus required to have insurance.

25. Having heard from the parties, the Tribunal decided as follows:
 - 1) Off-road vehicles at a closed course competition are exempt from requiring insurance and that a closed course competition does not need to be sponsored by a motorcycle association to be exempt.

 - 2) In the alternative, if a closed course competition does need to be sponsored by a motorcycle association to be exempt, then CMRC qualifies as a sponsoring motorcycle association on account of its affiliation with AMSA.

ANALYSIS

The Reconsideration Request

26. Rule 18 of the Tribunal's Common Rules of Practice and Procedure provides a reconsideration process to parties.
27. Citing Rule 18.2(b), the applicant alleges the Tribunal made the following significant errors of law or fact such that the Tribunal would likely have reached a different decision had these errors not been made. Those errors were as follows:
 - 1) The adjudicator incorrectly applied the *Ledcor* test in placing the onus on the applicant to prove the exemption at issue.
 - 2) The adjudicator erred in her statutory interpretation in that:
 - i. The adjudicator erred in her interpretation of the legislative intent of the *Off-Road Vehicles Act*.
 - ii. The adjudicator erroneously applied the last antecedent rule.
 - iii. The adjudicator incorrectly interpreted the definition of 'motorcycle association' as defined under Section 1 of Regulation 863.
 - 3) The adjudicator made erroneous findings of fact by failing to consider a purported interpretation of the provision of the Ministry of Transportation in certain materials and with respect to the nature of "rallies".
28. Basically, the applicant submits that the Tribunal has erred in its statutory interpretation that his dirt bike was not an automobile, due to an exemption in s. 2(1) 5 of Ontario Regulation 863 made under the *Off-Road Vehicle Act*.
29. In response, the respondent submits that the Tribunal's interpretation was correct but that even if the interpretation of the exemption in s. 2(1) 5 of Ontario Regulation 863 was incorrect, the exemption would still apply based on the finding that AMSA was affiliated with the CMRC.
30. The respondent further submits that the applicant has failed to identify how the alleged errors if corrected would have resulted in the Tribunal reaching a different decision.
31. Having outlined the positions of the parties, let me address each of the errors alleged to have been made by the adjudicator.

Did the adjudicator incorrectly apply the Ledcor test?

32. *Ledcor*² provides a three-part test to resolve ambiguities in interpreting, among other things, standard form insurance contracts. It requires:
- 1) The Tribunal to decide if there is coverage – an onus placed on the insured to prove.
 - 2) If coverage is established, the Tribunal is required to decide if there is any applicable exclusion that denies coverage – an onus placed on the insurer to prove.
 - 3) If it is decided there is an exclusion and the insured wishes to claim there is an exemption to the exclusion, the Tribunal decides whether or not it exists – an onus placed on the insured to prove.
33. When applying this test, coverage provisions are to be interpreted broadly and exclusion provisions are to be interpreted narrowly³.
34. The applicant submits the adjudicator incorrectly followed the test in *Ledcor* and placed the onus on the applicant to prove that the statutory exception did not apply.
35. Instead, the applicant submits the adjudicator should have applied the test from the Ontario Court of Appeal's decision in *Meyer v. Bright*⁴. In that decision, the court held the onus of proof usually rests upon the party seeking to bring itself within a statutory exception. On this basis, the applicant argues that the respondent bears the onus of proving the statutory exclusion set out in s. 2(1) 5 of Regulation 863 applies. I agree that the onus is on the insurer to prove an exclusion but not for the reasons submitted by the applicant.
36. I do not agree with the applicant that the adjudicator incorrectly referenced the *Ledcor* test. I agree with the respondent that this matter deals with the narrow question about whether an exclusion applies to insurance coverage. *Meyer* does not apply as that was a tort case dealing with the issue of a tort threshold rather than SABS coverage. I agree with the respondent's submissions that the test in *Ledcor* applies.

² *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, [2016] 2 SCR 23, 2016 SCC 37.

³ *Ibid.* at paragraph 51.

⁴ *Meyer v. Bright*, 1993 CanLII 3389 (ON CA).

37. In applying *Ledcor*, the Tribunal must determine whether Mr. Beaudin’s dirt bike was covered by his motor vehicle liability policy and therefore eligible to obtain accident benefits under the Schedule. The legal question was whether or not the dirt bike could be considered an “automobile”.
38. The Schedule is a regulation under the *Insurance Act* which, as the Court of Appeal has noted, provides two different definitions of an “automobile”⁵:
- 1) Section 224 of the *Insurance Act* for the purposes of Part VI, entitled “Automobile Insurance” defines “automobile” to include “a motor vehicle required under any Act to be insured under a motor vehicle liability policy” and any vehicle prescribed by regulation to be an automobile.
 - 2) Section 1 of the Act defines an “automobile” to include “a trolley bus and a self-propelled vehicle, and the trailers, accessories and equipment of automobiles,” but not “railway rolling stock that runs on rails, watercraft or aircraft”.
39. The *Off-Road Vehicles Act* does not contain a definition of “automobile” but as noted above s. 15 generally requires all drivers of off-road vehicles to be insured under a motor vehicle liability policy. I find Mr. Beaudin’s dirt bike was a type of vehicle that is considered an automobile for purposes of both s. 224 and s. 1 of the Insurance Act.
40. While his insurer disputes Mr. Beaudin is afforded coverage, that argument is based on the fact the insurer says the dirt bike was being driven at a particular type of event. If his dirt bike was not being driven at a CMRC-sponsored event at the time of the accident but on a friend’s property, presumably the insurer would acknowledge Mr. Beaudin would obtain accident benefits under the Schedule. This case turns on the question of where he was driving, not what he was driving. To my mind, this is an argument about exclusion from the policy rather than about coverage.
41. While the adjudicator referenced *Ledcor*, and also correctly cited the three-pronged test in *Adams*⁶ in order to decide if Mr. Beaudin’s dirt bike was an “automobile”, she did not complete the required analytical steps. Her analysis was complicated by the fact that the parties did not actually address the threshold factual question of whether or not the policy covered Mr. Beaudin’s dirt bike. From my review of the record and submissions, it appears the Tribunal proceeded on the basis the parties were content to argue the preliminary motion on the assumption the dirt bike was covered by the policy, which I note because

⁵ *Matheson v. Lewis*, 2014 ONCA 542 (CanLII) at para. 42 to 44.

⁶ *Adams v. Pineland Amusements Ltd*, [2007] O.J. No.4724 (C.A.) ONCA 844 (CanLII).

the initial denial of the insurer after the accident does suggest that Mr. Beaudin removed his dirt bike from being covered by his policy, which is subsequently not relied upon in the ultimate denial or in the preliminary motion.

42. As she was not called on by the parties to determine whether or not Mr. Beaudin had removed coverage from his dirt bike, the adjudicator made no determination in respect of this threshold factual question that would have been of assistance in the first part of the *Ledcor* test. She also made no determination of whether or not Mr. Beaudin's dirt bike was an automobile for purposes of the *Adams* test. Instead, she moved to the second stage of the *Ledcor* test and examined at length the arguments and interpretations regarding Ontario Regulation 863.
43. I believe the adjudicator made the error of failing to apply and decide the first part of the *Ledcor* test because of the way in which the preliminary motion was heard. The decision did not address the threshold factual question of whether or not the dirt bike had been intended, or was, to be included under his policy. The hearing seems to have proceeded on the assumption the dirt bike was included in Mr. Beaudin's insurance policy. If that question had been addressed during the motion, the onus was on the applicant to prove it was.
44. The hearing of this matter was further complicated by the fact that the respondent's submissions were heard first, the applicant was heard second, and the respondent was given a right of reply. This was a problematic way of proceeding because it heard from the parties in reverse from how they bore the onus under the *Ledcor* test. In other words, while the applicant had the onus of establishing coverage, the first arguments the Tribunal heard were from the insurer as to why there was an exclusion of coverage rather than first from the applicant as to why he was covered.
45. We must now turn to the question as to whether the respondent has met the onus under the second part of the *Ledcor* test to prove that an exclusion exists, which engages the question of whether the adjudicator erred in her statutory interpretation.

The Proper Interpretive Approach

46. When interpreting the Schedule, the Supreme Court has held the Schedule is consumer protection legislation intended to protect the purchasers of automobile insurance and must be construed in a manner that meets that objective⁷. In other words, the Schedule must be interpreted in a purposive manner.

⁷ *Smith v. Co-operators General Insurance Co.*, [2002] 2 S.C.R. 129, 2002 SCC 30.

47. This is consistent with the guidance in *Ledcor* that coverage must be construed broadly and exclusions construed narrowly.

The Legislative Intent behind the Off-Road Vehicles Act

48. In her decision, the adjudicator cites paragraph 28 of the Court of Appeal's decision in *Matheson v. Lewis*⁸ as authority for stating the legislative intent of the *Off-Road Vehicles Act* is to protect the public when off-road vehicles are driven on land that the owner does not occupy, and to allow the vehicles to remain uninsured if they are being driven on the owner's land, which would not pose any risk to the public. With respect, I agree with the applicant, that the adjudicator has erred on this point.
49. The passage she cites, and which the respondent also points to, is not about legislative intent. Rather, that passage describes a balance that is struck between the needs of farmers (when they are driving vehicles with more than two wheels bearing a slow moving vehicle sign on their own property) and the general protection of the public who are driving on public highways.
50. The Court of Appeal makes it very clear at paragraphs 20 and 36 to 39 in *Matheson v. Lewis* that the legislative intent differs from what the adjudicator stated. The *Off-Road Vehicles Act* is a part of Ontario's comprehensive legislative scheme for automobile insurance designed to protect innocent victims of automobile accidents. Its intended goal is to establish universal insurance coverage. In furtherance of that goal, it makes it an offence to fail to purchase insurance and those who do fail to purchase it are barred from recovering damages or accident benefits. The intent of the scheme is to give drivers a strong incentive to purchase insurance and to punish them if they do not.
51. This intent is also clear when the legislation was first introduced according to the Hansard excerpt in the record. James Snow, the Minister of Transportation, stated with respect to off-road vehicles⁹:

Public liability insurance will be required except if they are being used exclusively on the vehicle owner's private land.

52. The Minister also noted that the regulation making power under the statute would be used to exempt specific types of vehicles from the requirement of the law, specifically: self-propelled implements of animal husbandry; road-building

⁸ *Matheson v. Lewis*, 2014 ONCA 542 (CanLII).

⁹ Hansard, June 7, 1983 and October 11, 1983, Applicant's Closing Submissions, Tab 5.

machines; golf carts; and, vehicles for the physically disabled. There was no mention of motorcycles used for racing being exempted.

53. Flowing from the intent of this scheme, if drivers without insurance are in an accident, they are faced with a serious risk of not being able to obtain damages and benefits. In *Matheson v. Lewis*, Mr. Matheson assumed that risk, to his detriment, when he decided not to insure his ATV and was in an accident that was not his fault on a highway¹⁰.
54. This is why the first part of the *Ledcor* test is crucial. It answers the question of whether or not someone is insured – i.e. does their policy extend to the vehicle in question.

Reading Ontario Regulation 863

55. There are five exemptions listed in s. 2(1) of Ontario Regulation 863. The first four apply to golf carts, self-propelled implements of animal husbandry, road-building machines, and wheelchairs. The respondent submits these are all slow moving vehicles and that, as such, the government concluded they posed little or no risk to anyone wherever they are operated. No evidence or authority is provided, this is only conjecture.
56. Three of these exemptions include a wide variety of vehicles. Unlike golf carts that perform one basic function in one type of setting (as the respondent describes), there are all manner of specially-designed wheelchairs, farm machinery, and road-building machines. As this is the case, an interpretive provision is included in s. 1 to describe the general characteristics applying the enumerated exemptions.
57. The fifth exemption in s. 2(1) is not based on the type of vehicle that is being driven. Rather, it relieves drivers from the requirement to be insured when they are driving in some types of competitions. It engages two questions:
 - 1) Was the off-road vehicle being driven or exhibited at a closed course competition or rally?
 - 2) Was the closed course competition or rally sponsored by a qualified motorcycle association?

¹⁰ *Matheson v. Lewis*, 2014 ONCA 542 (CanLII).

58. In this case, the parties only agree Mr. Beaudin sustained his injuries during a race at the Gopher Dunes closed course competition.
59. The respondent submitted that all closed course competitions are exempt and only rallies sponsored by a qualified motorcycle association are exempt. Even if it is wrong about the scope of the exemption for closed course competitions, the respondent submitted the event at Gopher Dunes was sponsored by a qualified motorcycle association (CMRC) and thus competitors were excluded from obtaining benefits under their motor vehicle liability policies in the event they were injured in a race.
60. In contrast, the applicant submitted that the exemption only applies if the closed course competition or rally has been sponsored by a qualified motorcycle association. It is submitted CMRC was not a qualified motorcycle association and thus competitors were eligible to obtain benefits under their motor vehicle liability policies in the event they were injured in a race at Gopher Dunes.
61. The Tribunal agreed with the submissions of the respondent for the following reasons:
- 1) The provision of s. 2(1)5 should be read applying the last antecedent rule so the sponsorship requirement only applies to rallies.
 - 2) The adjudicator's understanding of the legislative intent behind the *Off-Road Vehicles Act* and a subsequent public policy based finding that off-road vehicles driven in closed course competitions pose little risk to the public. She reasoned those drivers do not require insurance unlike a rally where risk to the public is greater but can be controlled by a motorcycle association. Only drivers of off-road vehicles in unsponsored rallies require motor vehicle liability insurance.
 - 3) CMRC's relationship with AMSA satisfied the qualification for CMRC to be considered a motorcycle association.
62. As the respondent was an insurer trying to prove there is an exclusion that denies coverage, it had the onus to do so. As I explain below, I not believe it satisfied this onus and that the adjudicator erred in finding for the respondent.

The Last Antecedent Rule

63. The wording of the provision that is at issue is as follows:

2. (1) The following are designated as classes of vehicles that are exempt from the provisions of the Act and this Regulation:

...

5. Off-road vehicles driven or exhibited at a closed course competition or rally sponsored by a motorcycle association.

64. As the applicant notes, the last antecedent rule is a doctrine of statutory interpretation that holds that qualifying words or phrases refer only to the last word or phrase unless the context or entire act clearly requires otherwise. While it may be a recognized interpretive tool, it is not the first that is to be relied on. The preferred first approach to statutory interpretation following *Bell ExpressVu*¹¹ is that the words of an Act are to 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.
65. The phrase “Off-road vehicles driven or exhibited at a closed course competition or rally sponsored by a motorcycle association” is short and contains no commas. As the respondent notes, the last antecedent rule can be used to deconstruct long provisions, where there are many sub-clauses, and where the use of commas is confusing or inconsistent. However, this provision does not suffer from those difficulties.
66. The term “motorcycle association” receives its own definition in s. 1 of the regulation, which denotes it is a term that is supposed to have broad general application to the whole phrase describing the exemption in paragraph 5 of s. 2(1). In other words, that the motorcycle association sponsorship requirement applies to both closed course competitions and rallies.
67. Reading the sponsorship requirement as applying to both closed course competitions and rallies is the narrower reading of the phrase, which is consistent with the second part of the *Ledcor* test. It is also consistent with the legislative intent behind Ontario’s automobile insurance legislation of requiring universal insurance coverage, which is subject to very few exceptions, and gives drivers a strong incentive to purchase insurance. This is also consistent with the interpretive approach advanced by the respondent that words within a statute must be interpreted purposively and within the context of the entire statute¹².

¹¹ *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 SCR 559, 2002 SCC 42 (CanLII) at paras. 26 to 30.

¹² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC) at para 21.

68. In this context, I think it is a clear and rational reading of the provision that sponsorship is required for both closed competitions and rallies and the respondent's submissions have not convinced me to read it differently.

The Tribunal's public policy considerations

69. The Tribunal found that rally competitions pose greater risk to the public than close course competitions. As the applicant notes that finding, while supported by the respondent, was made without any substantive evidence. More importantly, however, that is tangential to the objectives of the legislative scheme.
70. I do take the respondent's point that narrowing the exclusion will result in off-road drivers having to carefully determine whether the events they are competing in are sponsored in such a way that may exclude them from being afforded benefits in the event of injury. That is an intended feature rather than an inadvertent flaw of this system. The Ontario automobile insurance system is supposed to provide drivers a strong incentive to have automobile insurance.

Is the CMRC a Motorcycle Association?

71. I agree with the applicant that it was confusing for the adjudicator to find, in her alternative reasons, that the event at Gopher Dunes was sanctioned but not sponsored by CMRC. The exemption requires sponsorship. If that was not present, that should have been the end of the analysis.
72. Nevertheless, the Tribunal went on to find that the event in Courtland, Ontario was sponsored by a motorcycle association by virtue of CMRC's relationship with AMSA.
73. The respondent submits that finding CMRC was a motorcycle association was a reasonable finding of fact based on the evidence before the Tribunal. I think it is a mixed question of fact and law and I think the adjudicator erred.
74. Under the regulation, a motorcycle association is "a motorcycle club or association that has or is affiliated with a motorcycle club or association that has a published constitution and a membership roster of more than twenty-four persons". The respondent concedes that CMRC, by itself, is not a motorcycle club or association but submits that the relationship between AMSA and CMRC is enough to establish the latter as a motorcycle association under Ontario law. I am not convinced of this.
75. As the applicant submits, CMRC is not a club or association. It is a corporation. Even assuming it can be treated as a club or association, the respondent needed

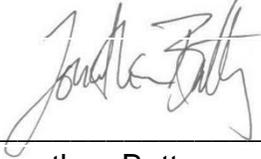
to establish that it has or is affiliated with another club or association that meets the requirement of having a constitution and a membership of over 24 people. As the respondent is making the case that an exclusion applies, it has the onus of proving this.

76. Again, I think it important to refer to the purposes of Ontario's automobile insurance scheme. Its goal is universal coverage and it is designed to provide Ontario drivers a strong incentive to purchase automobile insurance because without it, in the event of an accident, they do not obtain damages and accident benefits.
77. The exemptions that are found in this legislation are to be construed narrowly in order meet its legislative objective. The exemptions are also designed to apply to activities taking place in Ontario, specifically farming, road-building, and competitive motorcycle driving. It follows, therefore, that the legislative intent behind the regulation is that Ontario residents who are participating in events organized by the clubs to which they belong may be exempt. Thus, the exemption is directed towards drivers who are members of Ontario-based motorcycle associations that host events in Ontario.
78. AMSA, which operates in Alberta, is a regional organization of CMRC for events in Alberta. AMSA had no role in organizing the Gopher Dunes event in Courtland and the CMRC had no regional organization in southwestern Ontario. The license fee, the gate fee, and the entry fees Mr. Beaudin paid at Gopher Dunes did not go in whole or in part to AMSA. At most, the connection that AMSA had to the event at Gopher Dunes is that it might have received race results from the event. Merely receiving information does not constitute the sort of affiliation that was intended by the legislation.

CONCLUSION

79. Had these errors not been made, the Tribunal would likely have reached a different decision on the preliminary motion. For that reason, I have not had to review the findings of fact relating to a purported interpretation of the Ministry of Transportation's materials or with respect to the nature of "rallies".
80. As the record and submissions before the Tribunal were detailed and focused primarily on legal issues and questions of statutory interpretation, there is no need to send the matter back to be re-heard by the same or a new adjudicator. Accordingly, as provided for in Rule 18.4, I grant the applicant's Request for Reconsideration and I find Mr. Beaudin is not excluded from receiving accident benefits under the Schedule.

81. The question remains, however, what precise benefits Mr. Beaudin is entitled to obtain. That question needs to be heard by a new adjudicator, who could also hear the threshold question as to whether or not Mr. Beaudin removed his dirt bike from his policy with Travelers.



Jonathan Batty
Associate Chair
Licence Appeal Tribunal

Released: September 27, 2019