

Safety, Licensing Appeals and  
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**Licence Appeal Tribunal**

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## RECONSIDERATION DECISION

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**Before:** Linda P. Lamoureux, Executive Chair

**Date:** December 21, 2016

**File:** 16-000272/AABS

**Case Name:** Michele Gilbertson v Aviva Insurance Canada

**Written Submissions By:**

**For the Respondent:** Geoffrey Keating, Counsel

**For the Applicant:** Renee Reynolds, Counsel

## Overview

1. On October 19, 2016, the Licence Appeal Tribunal (the “Tribunal”) issued a final decision in *Michele Gilbertson v Aviva Insurance Canada*.
2. On November 9, 2016, the respondent requested a reconsideration of the Tribunal’s decision on the basis that the Tribunal acted outside its jurisdiction in considering and making a finding on an issue that was not in dispute and not before the Tribunal.
3. Specifically, the respondent submits that the Tribunal considered and made a finding on the issue of “Did Ms. Gilbertson suffer predominantly minor injuries in the July 14, 2013 motor vehicle accident?”
4. The respondent requests an amendment to the decision to exclude all references, analysis and findings with respect to the Minor Injury Guideline (“MIG”) issue.
5. On November 30, 2016, the applicant provided submissions in response to this request.
6. For the reasons that follow, I grant the respondent’s request for reconsideration and cancel the Tribunal’s Order in respect of the MIG finding.

## Discussion and Reasons

7. The criteria for reconsideration are set out in Rule 18.2 of the Licence Appeal Tribunal *Rules of Practice and Procedure*, which states that the Executive Chair will not grant a request for reconsideration unless one or more of the following criteria are met:
  - a) The Tribunal acted outside its jurisdiction or violated the rules of natural justice or procedural fairness;
  - b) The Tribunal made a significant error of law or fact such that the Tribunal would likely have reached a different decision;
  - c) The Tribunal heard false or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result; or
  - d) There is new evidence that could not have reasonably been obtained earlier and would have affected the result.
8. In the October 19, 2016 decision in this matter, the Tribunal listed the following as one of the issues in dispute:

Did Ms. Gilbertson suffer predominantly minor injuries in the July 14, 2013 motor vehicle accident?

9. The adjudicator made a finding on this issue at paragraphs 5 and 22(1):

5. I am persuaded on the balance of probabilities that the bilateral carpal tunnel syndrome and the right sided sciatica are a direct consequence of the motor vehicle accident of July 14, 2013. I also find that the neurological injuries suffered by Ms. Gilbertson do not fall within the Minor Injury Guideline.

22. In light of the foregoing, I find that:

1) Ms. Gilbertson's injuries do not fall under the Minor Injury Guideline.

10. The respondent submits that the issue of whether the applicant is in the MIG was not an issue in dispute at the hearing. The respondent indicated that the applicant was "removed from the Minor Injury Guideline on or about June 2014" and the issue of whether the Guideline is applicable is not in dispute. As such, the respondent takes the position that the Tribunal acted outside its jurisdiction in considering the issue and making a finding in respect of the MIG.

11. Further, the respondent submits that the MIG issue was not listed in the Application by an Injured Person, Response by an Insurance Company or the Case Conference Report and Order.

12. On November 30, 2016, the applicant provided her submissions in response to this request. The applicant submits that the Tribunal's Order should not be amended and that the respondent denied treatment to the applicant on the basis "they found her injuries to be "Minor Injuries" and that she fell within the Minor Injury Guideline."

13. I have reviewed the record in this case and the parties' submissions. I am satisfied that the issue of whether the applicant's injuries fall within or outside of the MIG was not before the Tribunal as an issue in dispute. The issue was not listed by the applicant on her application or in the insurer's response. Further, the issue was not listed in the Case Conference Report or Order. As such, it was not necessary for the Tribunal to decide the issue and the Tribunal acted outside of its jurisdiction in deciding an issue that was not an issue in dispute before it.

14. Based on the above, I therefore grant the respondent's request for reconsideration.

15. The decision in respect of the MIG in paragraphs 5 and 22 (1) of the October 19, 2016 Tribunal decision in this matter is cancelled.



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Linda P. Lamoureux  
Executive Chair  
Safety, Licensing Appeals and Standards Tribunals Ontario

Released: December 21, 2016