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Defender

September 2025

The MIG extended: Possible diagnoses now warrant removal from the MIG

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Overview

The Minor Injury Guideline (the “MIG”) sets out a limit of \$3,500 for medical and rehabilitation benefits. This limit is the presumed starting point for payment of accident benefits. The License Appeal Tribunal (the “LAT”) places the onus on the insured to show they warrant removal from the MIG, by producing medical evidence that shows their injuries are not predominantly minor. A common way of doing so is by providing evidence of conclusive diagnoses of psychological impairments sustained as a result of the respective accident.

However, in the case of [Banton v Belair](#), the LAT held that even a provisional or possible psychological diagnosis may warrant removal from the MIG. In doing so, the LAT lowered the onus applicants must meet for MIG removal, presenting adjusters and defence counsel with new considerations when handling such cases.

Facts

The Applicant, Damian Banton (“Mr. Banton”), was involved in a motor vehicle accident in February 2020. Mr. Banton applied for benefits under the *Statutory Accident Benefits Schedule* (“*Schedule*”) but was denied by the Respondent, Belair.¹

Mr. Banton argued he should be removed from the MIG because his injuries were not predominantly minor. Mr. Banton argued he was not subject to the MIG because he had a pre-existing condition which would preclude him from recovering if kept under the MIG. Concurrently, there was medical evidence that supported a psychological impairment.²

The Minor Injury Guideline

A person involved in a motor vehicle accident with predominantly minor injuries is limited to \$3,500 of medical and rehabilitation benefits as set out in [s. 18\(1\)](#) of the *Schedule*.³ A minor injury is defined in [s. 3\(1\)](#) of the *Schedule* as, “one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”⁴

1 *Banton v Belair*, 2025 ONLAT 23-003259/AABS [*Banton*].

2 *Ibid* at para 11.

3 O Reg 34/10: *Statutory Accident Benefits Schedule*, s 18(1) [*Schedule*].

4 *Ibid* at s 3(1).

The burden of proof lies with the insured if they wish to be removed from the MIG.⁵ The insured must show their injuries are not predominantly minor, or that they have a documented pre-existing condition that prohibits them from recovering if they were kept under the MIG.⁶ Psychological impairments are not defined as minor injuries, and so the LAT has commonly found that the diagnosis of such impairments warrants an applicants removal from the MIG.

Potential psychological impairments warranted Mr. Banton's removal from the MIG

In *Banton v Belair*, Mr. Banton argued that he had a psychological injury resulting from the motor vehicle accident and as such should not be limited by the MIG.⁷ This was supported by an assessment from his family physician, Dr. Cheung, who endorsed a provisional Post-Traumatic Stress Disorder ("PTSD") diagnosis.⁸ In Dr. Cheung's clinical notes and records, she notes Mr. Banton had sleeping difficulties, nightmares, and anxiety in 2021.⁹ However, Dr. Cheung only assessed Mr. Banton with possibly having PTSD. Similarly, Mr. Banton met with Dr. Direnfeld, a clinic psychologist, who completed a psychological assessment where he noted Mr. Banton tested for the most severe, or second most severe, option on the PTSD Checklist for DSM-5.¹⁰

Belair argued since Dr. Cheung did not mention Mr. Banton's possible PTSD diagnosis until fourteen (14) months after the accident, he should not be removed from the MIG.¹¹ Concurrently, Belair argued that while Dr. Direnfeld endorsed symptoms for a provisional diagnosis of PTSD on June 2, 2021, when correlated with the diagnostic interview, there was insufficient clinical evidence to warrant a conclusive diagnosis of PTSD.

However, the LAT agreed with Mr. Banton that on a balance of probabilities he should be removed from the MIG. The LAT made clear that Mr. Banton met his burden of proof and that the medical evidence supported his claim that he suffers from a psychological impairment.¹² The LAT was satisfied that Mr. Banton required additional psychological assessments to determine his psychological condition, and permitted his removal from the MIG.¹³

Takeaways

The LAT's decision to factor in provisional psychological diagnoses expands the grounds on which an insured can be removed from the MIG. Adjusters and counsel alike should reflect on the case of [Banton v Belair](#) when dealing with Applicants who exhibit signs of psychological impairments.

5 *Banton, supra* note 1 at para 10.

6 *Ibid*; *Schedule*, s 18(2).

7 *Ibid* at para 42.

8 *Ibid* at para 14.

9 *Ibid*.

10 *Ibid* at para 15.

11 *Ibid* at para 16.

12 *Ibid* at para 17.

13 *Ibid* at para 42.



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