Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Grewal v. Peel Mutual Insurance Company, 2021 ONLAT 20-010308/AABS

RECONSIDERATION DECISION

Before:	Craig Mazerolle, Adjudicator
Date of Order:	October 8, 2021
Tribunal File Number:	20-010308/AABS
Case Name:	Harpreet Grewal v. Peel Mutual Insurance Copmany

Written Submissions by:

For the Applicant:	Imtiaz Hosein, Counsel
	Nathan Tischler, Counsel
For the Respondent:	Jonathan Schrieder, Counsel

BACKGROUND

[1] Due to injuries sustained from an accident on November 7, 2016, the applicant sought accident benefits from the respondent, pursuant to the *Statutory Accident Benefits Schedule* ("*Schedule*").[1] The respondent denied some of these benefits, so an application was filed with the Licence Appeal Tribunal ("Tribunal").

[2] After completing a motion hearing involving both oral and written submissions, I denied the applicant's motion to add the issue of punitive damages (in the amount of $150,000.00) to the hearing set to commence on October 18, 2021 ("Motion Decision").[2]

[3] The applicant took issue with the Motion Decision, so she filed a Request for Reconsideration claiming my ruling was based on an incorrect legal interpretation of the accident benefits regime, as well as a misunderstanding of the jurisdiction provided to the Tribunal through s. 280 of the *Insurance Act*.[3] Specifically, the applicant alleged I made the following errors:

a. The Legislature did not, with the necessary level of clarity, indicate that common law damages were removed as a potential remedy for the Tribunal when adjudicating accident benefits disputes;

b. Awards, granted in accordance with s. 10 of O. Reg. 664, do not address the "subjective" mischief that can be captured by damages; and,

c. Section 280 of the *Insurance Act* does confer the jurisdiction to award damages—a necessary finding in light of the "exclusive jurisdiction model" from *Weber v. Hydro Ontario* ("*Weber*").[4]

[4] The applicant also alleged that my interpretation of the Tribunal's remedial powers did not align with the *Schedule*'s consumer protection mandate; the need for decision-makers to fill in remedial gaps; and the United Nations Convention on the Rights of Persons with Disabilities ("CRPD").[5]

[5] In addition to arguing that the Motion Decision is an interim order (such that it cannot be reconsidered), the respondent contended that there is no merit to the

---

[1] *Effective September 1, 2010*, O. Reg. 34/10.
[2] *Harpreet Grewal v. Peel Mutual Insurance Company*, 2021 CanLII 40734 (ON LAT).
[3] R.S.O. 1990, c. I.8.
[4] 1995 CanLII 108 (SCC).
[5] UN General Assembly, *Convention on the Rights of Persons with Disabilities*: 24 January 2007, A/RES/61/106.

applicant's Request. In essence, the respondent alleged that the grounds underpinning this Request are either a restatement of those from the motion hearing, or they are new grounds that should have been raised at first instance.

[6] For the reasons to follow, the applicant's Request for Reconsideration is denied.

ANALYSIS

Jurisdiction to Hear Requests for Reconsideration

[7] Rule 18.1 of the *Common Rules of Practice and Procedure* ("LAT Rules") states that the Tribunal may "reconsider any decision of the Tribunal that finally disposes of an appeal."

[8] By relying on the term "finally disposes of an appeal", the respondent argued that there is no authority to consider this Request, because the final determination of the applicant's appeal cannot take place until after the October 2021 hearing is complete. I do not accept this line of reasoning.

[9] The substance of the Motion Decision was to strike the possibility of punitive damages being adjudicated by the Tribunal. That is, though the rest of the applicant's appeal is still moving forward, this decision meant that a part of the overall dispute has been "finally" disposed of.

[10] In support of this broader interpretation, I would note that Rule 18.1 uses the term "an appeal" versus, say, "the appeal", "the proceeding", "the dispute", etc. By using "an appeal", the LAT Rules suggests that the proceeding as a whole does not have to be disposed of prior to a reconsideration request being considered. Rather, so long as "an appeal" has been "finally" disposed of (regardless of any other appeals that might be still making their way toward completion), said decision can be subject to the Tribunal's reconsideration process.

[11] However, even if my reading of Rule 18.1 is too broad, I do not find the applicant has demonstrated that the power afforded to me should be used to reconsider my earlier ruling.

Similar Grounds to the Motion Hearing

[12] The four grounds for granting a reconsideration are listed in Rule 18.2 of the LAT Rules. Of particular relevance to this Request is subrule 18.2 (b): "The Tribunal made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made". Put another way, it is

not enough to demonstrate that an error has occurred, but a party must then establish that the adjudicator "would likely have reached a different result" without the error. I do not find that the applicant has met this threshold.

[13] To start, I find that most of the arguments raised in her Request were the same arguments dealt with during the motion hearing. Specifically, as demonstrated in my summary of the applicant's position in the Motion Decision, many of the grounds for reconsideration are a restatement of the arguments made during the motion hearing:

> … as the Supreme Court of Canada requires lawmakers to demonstrate "a clear expression of legislative intent" before a common law rule can be extinguished… There was no such "clear expression" during this transfer [of jurisdiction over accident benefits disputes from the courts to the Tribunal], and so the common law power to award punitive damages must still exist.
>
> Further, the applicant commented that the Tribunal's statutory remedies, namely, an award under s. 10 of Reg. 664… do not properly address the mischief at play. These remedies are limited to "objective" displays of unreasonable behaviour, while the case at bar involves the respondent's subjective, bad faith intentions—an internal state of mind to which only damages can speak.
>
> Finally, the applicant suggested that the inclusion of damages in the Tribunal's remedial toolbox would not only satisfy the *Schedule*'s consumer protection mandate, but also the obligation to ensure equal access to justice under the [CRPD]. Relying on the principle that legislation should be read in accordance with Canada's international treaties, the applicant submitted that denying access to punitive damages would violate the CRPD's guarantee at Article 13 that persons with disabilities have "effective access to justice… on an equal basis with others".[6]

[14] These arguments were addressed throughout the Motion Decision, with this line of reasoning eventually leading me to conclude that common law damages are not a remedial power available to the Tribunal.[7] As such, I am satisfied that the applicant's grounds involving: the need for clear statutory language to remove a common law power; the interpretation of the CRPD and the *Schedule*'s

[6] Motion Decision at paras. 11 – 13.
[7] *Ibid*. at paras. 19 – 26.

consumer protection mandate; as well as the divide between “objective” awards and “subjective” damages were addressed in this ruling.

[15] The reconsideration process is not a venue for parties to make the same arguments in hopes of reaching a different conclusion. Rather, to be granted a reconsideration, a party must demonstrate that at least one of the four criteria under Rule 18.2 has been met, and that this discretionary and extraordinary power should be used to overturn the principle of finality. By putting forward many of the same arguments in her Request for Reconsideration, the applicant has failed to meet this threshold.

New Grounds for Reconsideration

[16] However, in reaching the above finding, I do accept that there are some arguments included in the Request that appear to be distinct from her submissions at the motion hearing. Specifically, I find that the arguments concerning the need for adjudicators to fill in remedial gaps, and the applicant’s contention that I failed to properly account for the holding in *Weber* are not restatements of earlier arguments.

[17] Further, though the respondent contended that the applicant should not be allowed to raise new arguments during the reconsideration process, I interpret these arguments to be alleged errors in the Motion Decision—not wholly new grounds. Also, even if these issues should have been raised during the motion hearing, the respondent addressed them in its reconsideration submissions, and addressing these alleged errors is in line with the Tribunal’s mandate (under Rule 3.1) to ensure fair, merit-based adjudication. Considering there is no unfairness to the respondent (and the fact that adjudicating these issues is not so onerous as to imperil the Tribunal’s mandate for efficiency), I will address these grounds.

[18] Yet, even if these arguments should have been raised at first instance, I am still not satisfied that the applicant has met the standard under Rule 18.2.

Filling In Remedial Gaps

[19] The applicant claimed that I failed to properly exercise my jurisdiction by choosing not to fill in the potential remedial gap I identified. For ease of reference, I made the following observation at the conclusion of the Motion Decision:

> In closing, I will note that the removal of common law damages may mean that some insured persons do not have access to a meaningful remedy able to address certain forms of mischief within accident benefit disputes. For example, since no actual benefit is attached to being deemed catastrophically impaired, an unreasonable delay in making this determination would not be captured under the award or deemed incurred provisions, despite the deleterious effects experienced by delayed access to a higher funding limit.
>
> However, the balancing act between meeting the specific needs of individual applicants and the overall desire for efficiency and fairness across the entire system is not something for an administrative decision-maker like myself to decide. Instead, this delicate weighing of policy concerns and solutions is a task best left for the Legislature.[8]

[20] In challenging this reasoning, the applicant argued remedies are needed to "ensure compliance", such that the failure to read in an appropriate remedy risks imperiling the legitimacy of the legal system. Or, as the applicant argued, leaving a remedial gap in the accident benefits regime will "result in outcomes so senseless and obviously harmful that they would be inconsistent with the public's basic assumption that the legislature is a competent institution acting in the public interest." Though the applicant may interpret this part of the Motion Decision to be an example of my broader, allegedly improper promotion of efficiency over fairness (a promotion of savings that runs counter to the *Schedule*'s consumer protection mandate), I do not share this concern.

[21] Instead, my reasoning in the Motion Decision established that the Legislature knew that it was removing common law damages from the realm of accident benefits disputes when it shifted these cases to the Tribunal. Therefore, though I accepted that this removal may result in situations where there is no effective remedy, this tradeoff is precisely the kind of delicate balancing of public policy and individual interests that is properly within the Legislature's purview. It would be a significant overstep of my role to recognize that the Legislature made this decision, but then still order that common law damages form part of my remedial toolbox (especially as an administrative decision-maker's powers must be delineated by statute).

[8] Motion Decision at paras. 27 – 28.

[22] In a similar vein, though the applicant suggested that I have access to this remedy by way of s. 3(2) of the *Licence Appeal Tribunal Act, 1999*,[9] I do not find that a general provision meant to ensure the Tribunal's ability to fulfill its mandate can be used to import a remedy struck out by the Legislature. By stating that the Tribunal has "all the powers that are necessary or expedient for carrying out its duties", this provision provides the Tribunal with the authority needed to control its processes in accordance with its statutory mandates. I am not satisfied that this general language can be used to create a remedy that has been removed by the Legislature.

[23] Finally, the applicant cited *C.B. v. Allstate Insurance Company of Canada*[10] for the proposition that adjudicators can use their discretion to fill in remedial gaps from the *Schedule*. Specifically, Adjudicator Paluch found a lack of compliance with s. 44(9)(2)(ii) will mean that any resulting report cannot be relied upon by the insurer. I do not find this case is a similar situation, as the remedy crafted by Adjudicator Paluch was one directly linked to the provision at issue. Put another way, as opposed to importing common law damages into the *Schedule*, Adjudicator Paluch relied on the well-established principle that issues with an insurer's examination process may imperil the resulting report.

Exclusive Jurisdiction

[24] The second ground I will consider is the applicant's claim that I failed to properly apply the holding from the Supreme Court of Canada's ruling in *Weber*. By addressing the jurisdiction of labour arbitrators, *Weber* provides helpful guidance on how to manage jurisdictional divides between overlapping legal regimes and decision-makers. Briefly, when a unionized employee argued that the courts should address claims based on the *Canadian Charter of Rights and Freedoms*[11], the Supreme Court used the "exclusive jurisdictional model" to determine what disputes fall within an arbitrator's purview:

> On this approach, the task of the judge or arbitrator determining the appropriate forum for the proceedings centres on whether the dispute or difference between the parties arises out of the collective agreement. Two elements must be considered: the dispute and the ambit of the collective agreement.
>
> In considering the dispute, the decision-maker must attempt to define its "essential character"… The fact that the parties are

[9] S.O. 1999, c. 12, Sch. G.
[10] 2019 CanLII 119732 (ON LAT).
[11] *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11.

> employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement…[12]

[25] Relying on this framework, the applicant then cited one of the closing paragraphs of a ruling that formed a major part of the Motion Decision, i.e., *Stegenga v. Economical Mutual Insurance Company* ("*Stegenga*").[13] Specifically, the applicant highlighted paragraph 67 as an example of how the "exclusive jurisdiction model" should be applied to accident benefits disputes [emphasis added]:

> The facts giving rise to Ms. Stegenga's dispute with the insurer relate to her entitlement to benefits or to the amount of her entitlement, as those terms are used in s. 280(1): they are connected to the category of SABs to which she was entitled, and to the proper amount of her entitlement, and they relate to the insurer's handling of the claim. Because these matters are covered by the broad language in s. 280(1), they are within the LAT's jurisdiction under s. 280(2), and are thus within the ambit of the s. 280(3) prohibition on court proceedings. ***The LAT is specifically empowered to grant relief for claims like Ms. Stegenga's; the court is barred from doing so.***[14]

Considering the claim in *Stegenga* involved allegations of bad faith, the applicant in the present case suggested that—if the Tribunal has exclusive jurisdiction over disputes concerning accident benefits, regardless of how they are characterized by the parties—this jurisdiction must then confer the power to grant damages.

[26] There is no denying that the Tribunal possesses exclusive jurisdiction over the adjudication of accident benefits disputes—a finding clearly laid out by the Court of Appeal in the highlighted passage above. However, the issue with the applicant's line of reasoning is that, just because the Tribunal possesses this jurisdiction, it does not then mean that the powers the courts used to possess through its former jurisdiction has necessarily transferred to this new forum.

[27] Instead, as I explained in the Motion Decision, the Legislature made a clear decision to remove this power from the realm of accident benefits disputes

---

[12] *Weber*, at paras. 51 – 52.
[13] 2019 ONCA 615 (CanLII).
[14] *Ibid*. at para. 67.

during the shift to the Tribunal. I have not been provided with a compelling reason to rebut this conclusion, and so the Motion Decision shall stand.

ORDER

[28] The applicant's Request for Reconsideration is denied.

Released: October 8, 2021

Craig Mazerolle
Adjudicator