



**Licence Appeal Tribunal File Number: 23-002619/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Eloisia Lubin**

**Applicant**

and

**Allstate Insurance Company of Canada**

**Respondent**

**MOTION ORDER**

**ADJUDICATOR:**

**Ludmilla Jarda**

**APPEARANCES:**

For the Applicant:

Jordan Palmer, Counsel

For the Respondent:

Joan Wakeling, Adjuster  
Lauren Kolarek, Counsel

**Motion heard by  
Teleconference:**

**April 18, 2023**

## BACKGROUND

- [1] The applicant was injured in an automobile accident on **December 16, 2022** and sought benefits pursuant to the Statutory Accident Benefits Schedule – Effective September 1, 2010 (“Schedule”).
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).
- [3] A case conference has not yet been held, but one is scheduled to take place on September 29, 2023 at 3:00 pm.

## MOTION

- [4] On March 31, 2023, the applicant filed a Notice of Motion requesting the following relief:
  - a. An order granting relief as deemed just regarding the delay of the respondent in complying with a direction from the Tribunal;
  - b. An order granting a decision in favour of the applicant on an urgent and/or summary basis, with submissions by both parties as per direction of this Tribunal;
  - c. In the alternative to paragraph 4(b), an order scheduling an urgent or time sensitive case conference; and
  - d. Costs of this motion and the application.
- [5] The applicant’s motion record consisted of a Notice of Motion and two exhibits (a denial letter and correspondence from the Tribunal). In her Notice of Motion, the applicant alleged that the respondent ignored the authority of the Tribunal by not filing a response within the timeframe prescribed by the Tribunal. The Tribunal wrote to the respondent twice and did not receive a substantive response. The applicant further alleged that the respondent’s contempt or disregard of the Tribunal’s communications delayed access to justice and hinders the Tribunal’s ability to render decisions and control its process. The applicant submitted that this was an appropriate case to grant time sensitive or summary relief.
- [6] The respondent opposed the applicant’s motion.
- [7] With respect to the relevant facts, the respondent indicated that on March 8, 2023, they were advised that the applicant had filed an application on March 7, 2023 and that a Response was due within 14 days. On March 13, 2023, the respondent responded to the Tribunal, advised that they had not received a copy of the application, and requested a copy of the application. On March 29, 2023, the respondent received the file contents for the applicant’s claim. The following day, the applicant advised that she would bring this motion if no Response was

filed. When the respondent advised that they would deliver a Response by the next business day, the applicant alleged that they were acting in bad faith. The respondent ultimately delivered their Response later that day, but despite doing so, the applicant brought this motion.

- [8] The respondent submitted that there was no request for relief related to the late filing of the Response. Under Rule 20.2 of the Tribunal's Common Rules of Practice and Procedure ("Rules"), a Response shall be provided within 14 days of the respondent having been served with the AABS Claim or within such other period as may be specified by the Tribunal. As per section 2 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("*SPPA*"), this rule shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. The respondent argued that there were no legal consequences set out in the Rules regarding the submission of a Response beyond 14 days. Moreover, the applicant did not provide particulars of the legal framework she was relying on in her Notice of Motion.
- [9] The respondent further submitted that the Tribunal does not grant summary decisions nor is there any need for same. The respondent indicated that the applicant failed to provide a legal framework substantiating that she is entitled to an urgent and/or summary decision in her favour where a Response was filed 8 calendar days beyond the 14-day period provided. Further, there has been no significant delay warranting an urgent and/or summary decision.
- [10] The respondent also submitted that there was no prejudice to the applicant resulting from the respondent's late filing of the Response and noted that the case conference has been scheduled for September 29, 2023. Further, the motion lacks any merits and is a waste of the Tribunal's limited resources.
- [11] Finally, the respondent submitted that no costs should be awarded in favour of the applicant. Under section 17.1(2)(a) of the *SPPA*, the Tribunal shall not make an order to pay costs unless the conduct or course of conduct of a party has been unreasonable, frivolous, or vexatious or a party has acted in bad faith. Also, the circumstances in which the Tribunal may award costs and the amount of costs are set out at Rules 19.5 and 19.6. Costs are a discretionary remedy made only in exceptional circumstances. The respondent denied that they engaged in unreasonable, frivolous, or vexatious conduct, or that they acted in bad faith.
- [12] At the commencement of the motion hearing, the applicant stated that she had not been given the opportunity to file submissions with respect to this motion. She also stated that she only received the respondent's submissions on April 14, 2023. The applicant then informed the Tribunal that she had two cases that she intended to rely on which had not previously been disclosed to the respondent or the Tribunal. The applicant also requested that the motion hearing either be converted to a written hearing or be adjourned.
- [13] The applicant's request was denied, and she was given an opportunity to make

oral submissions with respect to this motion.

- [14] During her oral submissions, the applicant reiterated that she did not have the opportunity to make submissions. She then pointed to paragraph 2 of her Notice of Motion which reads as follows “an Order of this Learned Tribunal granting a decision in favour of the Applicant on an urgent and/or summary basis, with submissions by both Parties as per direction of this Learned Tribunal”. She explained that it was her understanding that as per paragraph 2, timelines for submissions would be set. The applicant also reiterated that she wanted to rely on case law that was not disclosed to the respondent or the Tribunal.
- [15] The applicant was given a further opportunity to make oral submissions with respect to this motion, and she did not make any further submissions.
- [16] The respondent was then given an opportunity to make responding oral submissions.
- [17] The respondent submitted that as per Rule 15, when a Notice of Motion is filed, all of the information the applicant is relying on should be included in their materials. As such, the respondent opposed the applicant’s request to rely on cases that had not previously been disclosed.
- [18] As the respondent was making their oral submissions, the applicant objected to the submissions on the basis that they had not had the opportunity to make substantive submissions on the motion. In response, the respondent submitted that the applicant should have filed her written submissions along with her Notice of Motion.
- [19] The applicant then submitted that not only was the respondent’s Response late, but the Tribunal had to follow up twice. The Response should have been timely. There is no dispute that the Tribunal can control its own procedure under section 25.0.1 of the *SPPA*. Further Pursuant to Rule 3.1(b), the Tribunal should ensure the efficient, proportional, and timely resolution of the merits of the proceedings before the Tribunal. The applicant further submitted that she only provided her availability for the September 2023 case conference in good faith, but she stated that she always wanted an expedited case conference as per her Notice of Motion. As for her request for a decision on a summary basis, she indicated that this request was akin to a preliminary issue hearing.

## **RESULT**

- [20] The applicant’s motion is denied.
- [21] Pursuant to section 23 of the *SPPA*, the Tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.
- [22] Further, under Rule 25.0.1 of the *SPPA*, the Tribunal has the power to determine

its own procedures and practices and may for that purpose make orders with respect to the procedures and practices that apply in any particular proceeding, and establish rules under section 25.1.

- [23] As per Rule 3.1, the Tribunal's mandate is to facilitate a fair, open, and accessible process, to allow effective participation by all parties, to ensure efficient, proportional, and timely resolution of the merits of the proceedings before the Tribunal, and to ensure consistency with governing legislation and regulations.
- [24] Rule 15 provides that a party bringing a motion shall deliver a Notice of Motion setting out: (a) the decision or order that the party is requesting from the Tribunal; (b) the grounds to be argued, including a reference to any statutory or regulatory provision, Rule or case law relied on; (c) the evidence in support of the motion; and (d) the proposed format of the motion. This requirement was also indicated in the Notice of Motion Hearing dated March 31, 2023.
- [25] The applicant had the opportunity to produce a full and complete motion record pursuant to Rule 15 and chose not to provide a complete record in support of her motion. Following the release of the Notice of Motion Hearing further indicating the requirement under Rule 15, the applicant did not take any steps to provide any further information in support of her motion. The respondent delivered their responding motion materials on April 14, 2023, in accordance with the Notice of Motion Hearing. At no time prior to the motion hearing did the applicant seek to adjourn the motion hearing.
- [26] Based on the facts and evidence before me, I find that the participatory rights provided to the applicant with respect to this motion hearing were consistent with the duty of fairness. Further, the Tribunal provided sufficient notice of the motion hearing to the parties by providing 18 days' of notice. The fact that the applicant was unprepared or still waiting to file additional information is not acceptable. A party does not have an automatic right to an adjournment.
- [27] With respect to the applicant's request for an order granting relief as deemed just regarding the delay of the respondent in complying with a direction from the Tribunal, as the party bringing the motion, the applicant has the onus of identifying the relief sought. Although the applicant made reference to the Tribunal's power to grant a relief, the applicant did not identify the actual relief sought, nor did she identify the grounds or any evidence in support of the relief sought. Accordingly, I find that the applicant has not satisfied her burden of establishing what, if any, relief should be granted in the circumstances.
- [28] With respect to the applicant's request for a decision in favour of the applicant on an urgent and/or summary basis, with submissions by both parties as per direction of this Tribunal, under the circumstances, I find that the applicant's motion is premature, and it would be procedurally unfair to prevent the respondent from responding to the claim advanced against them prior to the case

conference. Accordingly, the parties are directed to attend the case conference on September 29, 2023 as scheduled by the Tribunal. At the case conference, the parties shall be prepared to discuss how any preliminary issues will be adjudicated, e.g. deadlines, format of the hearing, etc.

- [29] With respect to the applicant's request for an urgent or time sensitive case conference, it is well-settled that the Tribunal is entitled to control its own procedure and is entitled to deference on matters requiring the exercise of discretion, such as scheduling requests. The parties are reminded that it is the Tribunal and not the parties that decides when cases will proceed. The Tribunal schedules proceedings based on operational and legislative requirements and the principles of natural justice and fairness. In this case, the Tribunal has scheduled a case conference, and I am not persuaded by the applicant's submissions that an earlier case conference is necessary. Further, there is no prejudice to the applicant to attend the case conference as scheduled. Therefore, the applicant's request is denied.
- [30] Finally, the applicant's request for costs of the motion and the application is denied. Costs are a discretionary remedy imposed when a party has acted unreasonably, frivolously, vexatiously, or in bad faith pursuant to Rule 19.1. The test represents a high bar. Based on the facts and evidence before me, I am not satisfied that the test under Rule 19 has been met in the circumstances of this case. Thus, no costs shall be awarded.
- [31] **Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.**

#### **OTHER PROCEDURAL MATTERS**

- [32] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Released: May 1, 2023**



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**Ludmilla Jarda**  
**Adjudicator**