CITATION: Patton v. Aviva Insurance Co. of Canada, 2025 ONSC 4234
COURT FILE NO.: 797/24; 800/24
DATE: 20250820

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Backhouse, Lococo and Shore JJ.

BETWEEN:	
CAMERON PATTON Appellant/Applicant	*Sherilyn Pickering* and *Rachel Andrews*, for the Appellant/Applicant
– and –	
AVIVA INSURANCE COMPANY OF CANADA and THE LICENCE APPEAL TRIBUNAL Respondents	*Maia Abba*s and *Eric Grossman*, for Aviva Insurance Company of Canada *Gün Köleoğlu*, for the Licence Appeal Tribunal
	HEARD at Toronto: July 8, 2025

Backhouse J.

Overview

[1] Cameron Patton appeals and seeks judicial review of the Decision of the Licence Appeal Tribunal (the "LAT") dated July 12, 2024, reported at 2024 CanLII 67351 (ON LAT), and the LAT's Reconsideration Decision dated December 12, 2024, reported at 2024 CanLII 123345 (ON LAT). The LAT dismissed the application as outside the two-year limitation period and refused to exercise its discretion to extend the limitation period. The LAT also refused Mr. Patton's request for reconsideration. It found that he raised several arguments in his reconsideration request that he did not address in his submissions at the preliminary issue hearing.

[2] Mr. Patton submits that the LAT made several errors of law and unreasonable findings of fact and mixed fact and law in determining that the insurer had met the test under *Smith v. Co-operators General Insurance Co.*, 2002 SCC 30, [2002] 2 S.C.R. 129 for making a

clear and unequivocal denial of benefits under s. 54 of the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 (the "*SABS*"). Mr. Patton asks that the LAT's determination that his claim is statute barred be quashed and the matter remitted to the LAT for a determination of whether he is entitled to income replacement benefits under the *SABS*.

[3] For the reasons set out below, the appeal and judicial review application are dismissed.

Background

[4] Mr. Patton was involved in a motor vehicle accident in 2020. He applied to Echelon Insurance for Income Replacement Benefits ("IRBs") under the *SABS*. On May 3, 2021, Echelon requested an Employer's Confirmation Form (OCF-2) signed by Mr. Patton's employer, noted that it had not been received as previously requested in contravention of s. 33(1) of the *SABS* and advised Mr. Patton that no IRBs are payable effective April 14, 2021 onwards due to non-compliance. The letter went on to state: "We will continue to monitor your recovery needs and may provide a further determination of benefits."

[5] The letter contained an Applicant's Right to Dispute Form ("Dispute Form") which stated:

> YOUR RIGHT TO DISPUTE THE INSURANCE COMPANY'S DETERMINATION OF YOUR CLAIM FOR STATUTORY ACCIDENT BENEFITS
>
> Under the Insurance Act, if your claim for statutory accident benefits has been reduced or denied by your insurance company, you have a right to dispute your insurance company's determination. If you do not agree with the insurance company's decision you may file an application with the Licence Appeal Tribunal (LAT) – Automobile Accident Benefits Service (AABS) within 2 years of the date of reduction or denial. WARNING: TWO YEAR TIME LIMIT You have TWO YEARS from the date of your insurance company's refusal to pay, or reduction of a benefit, to file an application with the Licence Appeal Tribunal – Automobile Accident Benefits Service. If you do not apply within two years, you will lose the right to dispute the determination. Your insurance company may have an internal complaint review system. While you are encouraged to work with your insurance company to settle your complaint, be warned that it does not extend the two-year time limit to make your claim.

[6] The Dispute Form then went on to advise how to file an application.

[7] On May 7, 2021, Mr. Patton returned to full-time work. Mr. Patton declined to attend an insurer examination in respect of IRBs because he had returned to work.

[8] On June 30, 2021, Echelon wrote to Mr. Patton:

> [Y]ou have returned to full-time work effective May 7, 2021. As such, there is no entitlement to ongoing income replacement benefits effective May 7, 2021. Please provide us with your Employer's Confirmation Form (OCF-2) from FedEx in order to calculate income replacement benefits owed to yourself. We will continue to monitor your recovery needs and may provide a further determination of benefits. Enclosed is Mr. Patton's Right to Dispute Notice which details your rights and limitations regarding your Accident Benefit claim.

[9] The June 30, 2021 letter contained the same Dispute Form as set out above.

[10] In August 2021, Aviva took priority of the claim.

[11] Mr. Patton had difficulty in getting the OCF-2 from his employer (by this time, he had changed employers). It was eventually received and submitted to Aviva on August 10, 2022.

[12] On February 24, 2023, Aviva wrote to Mr. Patton:

> Section 37(2)(e) of the Statutory Accident Benefits Schedule allows for the discontinuance of your Income Replacement Benefits once you have resumed your pre-accident employment duties. Therefore, you are no longer entitled to Income Replacement Benefits effective May 7, 2021. If the above information on your return to work is not accurate then please advise us immediately. Also, should you be unable to continue with your employment or should you have difficulties performing your duties please contact us so that we can review your entitlement to benefits or determine any assistance that could aid you in a successful return to your duties. Based on the OCF-2 from Fedex received on file, it would indicate entitlement to an Income Replacement Benefit in the amount of $81.21 weekly. A cheque will follow under a separate cover. [Emphasis added.]

[13] The February 24, 2023 letter also contained the same Dispute Form as set out above.

[14] Aviva calculated Mr. Patton's entitlement for the period November 30, 2020 to May 6, 2021 as $4,604.73. No cheque followed as promised and this amount was never paid.

[15] On November 24, 2023, Mr. Patton commenced an application at the LAT to challenge the denial of benefits, claiming IRBs from November 25, 2021 to date and ongoing.

[16] On January 24, 2024, Aviva advised Mr. Patton that it had reversed its position on income loss, stated that nothing was owing and gave reasons for that conclusion. The letter further advised:

> It is also our position that income replacement benefits were denied on June 30, 2021. More than two years have elapsed since that denial, meaning you have not disputed income replacement benefits within the applicable limitation period pursuant to section 56 of the Schedule.

Procedural History

LAT Decision

[17] The LAT held a preliminary issue hearing on the question of the limitation period. It concluded that the application was barred as out of time. It held that the May 3, 2021 letter was clear and unequivocal in denying Mr. Patton IRBs. It also relied on the Dispute Form that accompanied the letter which gave notice of the two-year period for challenging the denial at the LAT. As such, it found that the s. 56 limitation period began to run on May 3, 2021.

[18] The LAT further found:

1. This case was distinguishable from *17-004556 v. Aviva Insurance Canada*, 2018 CanLII 13157 (ON LAT) ("*17-004556 v. Aviva*"). In that case, the denial letter contained language that could have led the insured to believe that she could pursue IRBs later if her circumstances changed.

2. While Echelon's denial letter requested further information, it was nevertheless clear and unequivocal in denying the application for IRBs.

3. The applicant claimed that Aviva had not complied with all provisions of the *SABS* and therefore the denial was invalid. The LAT found his arguments were wrong in law. A denial that is wrong in law may nevertheless trigger the limitation period provided the denial is clear and unequivocal and sets out the two-year limitation period for challenging the decision. Thus, even if an insurer denies an application for IRBs on legally incorrect grounds, the limitation still runs.

Extension of time

[19] The LAT refused to exercise its discretion under s. 7 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G ("*LATA*") to extend the limitation period for Mr. Patton to challenge the denial of IRBs on the following grounds:

1. Mr. Patton failed to show that he had a *bona fide* intention to dispute the denial within the limitation period. His first attempt to challenge the IRBs decision arose at a case conference in a separate application that was held in October 2023, after the limitation period had expired.

2. Mr. Patton provided no explanation for the six-month delay from the expiration of the limitation period to the date his application was brought.

3. Allowing the application to proceed introduces inherent prejudice to Aviva, who is entitled to rely on the limitation period. It would also present systemic prejudice and undermine the public interest in finality.

4. The LAT did not make any determination regarding the merits of the application.

Reconsideration Decision

[20] Mr. Patton's request that the LAT reconsider its decision was dismissed.

[21] The LAT held that Mr. Patton raised several arguments for the first time on reconsideration. Those arguments which were not considered at the reconsideration hearing were:

a. The denial letter was not clear and unequivocal because it stated a further determination of benefits may be provided. Mr. Patton analogized this to *17-004556 v. Aviva*, in which a letter with similar language was found to be ambiguous.

b. Aviva did not communicate to Mr. Patton its decision that no further action was required regarding his claims after he returned to work.

c. Mr. Patton should not be penalized for not demonstrating an intention to challenge the denial letter earlier, because he continued to communicate with the insurers and did not understand that he had been denied IRBs.

[22] Mr. Patton argued that the Decision did not address the impact of subsequent communications between Aviva and Mr. Patton after the May 3, 2021 letter. However, the LAT held that it was not required to address all arguments and evidence submitted by Mr. Patton. Regardless, that evidence was irrelevant because the May 3, 2021 denial letter validly denied benefits and commenced the limitation period.

[23] The LAT held that it made no error in its treatment of *17-004556 v. Aviva*. While that decision was subsequently upheld by the Divisional Court in *Traders General Insurance Co. v. Rumball*, 2022 ONSC 7215, 30 C.C.L.I. (6th) 327 (Div. Ct.) ("*Traders v. Rumball*") and was binding[1], the LAT correctly determined that it was distinguishable on the facts.

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[1] *Traders v. Rumball* concerns the same dispute as the one the LAT considered in *17-004556 v. Aviva*, despite the different styles of cause.

[24] The LAT found that it erred in law by failing to consider what specific prejudice might result to Aviva if an extension of time was granted. However, that did not change the outcome of this case because the other factors supported dismissing Mr. Patton's request to extend time.

[25] The LAT held that Mr. Patton's other arguments constituted improper attempts to re-litigate issues argued in the preliminary issue hearing. No errors of law or fact were established. These arguments included:

a. The denial letter did not contain a valid request for information under s. 33 of the *SABS*.

b. The denial letter was not valid because it did not comply in all respects with the *SABS*.

Resignation letter

[26] During the reconsideration process, Mr. Patton sought to introduce evidence that he left his job after the preliminary issues hearing and therefore was entitled to IRBs after 104 weeks under s. 6 of the *SABS*. He sought to introduce a resignation letter effective August 2, 2024.

[27] The LAT held that the letter was not admissible because it was not clear that the letter could not have been introduced into evidence at the preliminary issue hearing. The letter was undated and there was no evidence as to when it was created. Second, while the resignation letter notes that the last day of Mr. Patton's employment was August 2, 2024, this does not establish that this letter was created after the hearing as argued by Mr. Patton. Rather, this establishes that the last day of employment is August 2, 2024. Mr. Patton also provided no evidence to prove when this letter was created, which was open to him to provide as he is the one who drafted it.

[28] The LAT further dismissed Mr. Patton's argument that he had newly discovered his claim to post-104 week IRBs and therefore his claim was not statute-barred. Mr. Patton's claim at all relevant times was for both pre- and post-104 week IRBs.[2]

[29] The LAT found:

> [60] The applicant also now raises new submissions that since he is now off work altogether, he would be eligible for post-104 IRB and that in accordance with the decision of *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882 (CanLII) (*Tomec*) he has just now discovered his post-104

[2] The criterion in the *SABS* to IRBs for the first 104 weeks following an accident is if one is prevented from working at one's usual occupation. Post-104 weeks, the criterion is if one suffers a complete inability to engage in any employment or self-employment for which one is reasonably suited.

IRB claim and, therefore, he cannot be statute-barred. Even if I agreed that *Tomec* applies in this situation, the applicant has provided no explanation on why discoverability and *Tomec* could not have been raised in his initial hearing submissions. As noted at paragraph 31 of the decision, the period in dispute for IRBs was from November 25, 2021 to date and ongoing, which encompasses both the pre-104 and post-104 period.

[61] Yet, in his initial hearing submissions, the applicant did not argue that he was not claiming post-104 IRB because he had returned to work. Instead, he maintained that he was not statute barred with respect to his IRB claim because the respondent did not provide a clear and unequivocal denial. As IRB was in dispute for both the pre-104 and post-104 period, in my opinion, the applicant could have raised discoverability and *Tomec* arguments at first instance, but he chose not to do so. I am also not persuaded by the applicant's position that he discovered he had a post-104 IRB claim when he submitted the resignation letter because he was already claiming IRB for the post-104 period in his application to the Tribunal.

[62] To summarize, the applicant has not tendered any new evidence which satisfies the three-part test under Rule 18.2(c).

Core Issue on Appeal

[30] The core issue on this application addressed below as Issue 1 is whether the May 3, 2021 denial letter complied with the principles set out in *Smith v. Co-operators* and triggered the start of the two-year limitation period. In addition, Mr. Patton raises the following issues:

Issue 2: Did the LAT err in failing to analyze subsequent correspondence from Aviva to Mr. Patton?

Issue 3: Did the LAT err with respect to the legal standard for a valid denial of benefits?

Issue 4: Did the LAT breach procedural fairness in the Reconsideration Decision by raising issues not raised by the parties?

Issue 5: Did the LAT err in denying Mr. Patton's request to extend the limitation period?

Issue 6: Did the LAT err in finding that Mr. Patton raised issues for the first time on reconsideration?

Issue 7: Did the LAT err by failing on reconsideration to consider evidence that was not previously available?

Issue 8: Did the LAT err by failing to find that Mr. Patton was entitled to post-104 week IRBs?

Court's Jurisdiction

[31] This court has jurisdiction over this appeal pursuant to s. 11(1) of the *LATA*. Under s. 11(6) of the *LATA*, this appeal is limited to questions of law.

[32] This court has jurisdiction over the judicial review application under ss. 2 (1) and 6 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1.

Standard of Review

[33] This is both an appeal and an application for judicial review.

[34] The appeal is restricted to questions of law, which are reviewable on a correctness standard: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37. There is no appeal with respect to questions of fact or questions of mixed fact and law except where there is an extricable question of law, which is reviewable on appeal on a correctness standard: see *Housen*, at paras. 26-37; *LATA*, s. 11(6).

[35] Issues of procedural fairness are questions of law reviewable on appeal on a correctness standard: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220, at paras. 26-30.

[36] The existence of a right of appeal limited to questions of law does not preclude a judicial review application for questions of fact or mixed fact and law: *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, 489 D.L.R. (4th) 191, at para. 57. The presumptive standard of review on a judicial review application is reasonableness: *Vavilov*, at paras. 23-25. There is no dispute that the reasonableness standard applies on this judicial review application.

Analysis

Issue 1: Did the May 3, 2021 denial letter comply with the principles set out in Smith v. Co-operators and trigger the start of the two-year limitation period?

[37] Mr. Patton argues that the LAT misapplied *Smith v. Co-operators* and *Traders v. Rumball* with respect to the two-year limitation period.

[38] Section 45 of the *SABS* provides that an application to dispute a denial of a benefit shall be commenced within two years of the insurer's refusal to pay. In *Smith v. Co-operators*, the Supreme Court required that to commence the two-year limitation period, a refusal of IRBs must contain a clear and unequivocal notice of denial, which outlines the dispute resolution process and relevant time limits and provides reasons for the denial, directed towards an unsophisticated person: *Smith v. Co-operators*, at paras. 20, 14.

[39] Mr. Patton further asserts that the LAT erred in law when it refused to apply *17-004556 v. Aviva*.

[40] In *17-004556 v. Aviva,* the letter relied upon by the insurer as starting the two-year limitation period included the following:

> As per Section 37(2)(e) of the *Statutory Accident Benefits Schedule* (SABS), we are therefore determining your IRB effective February 25, 2015 as you have resumed your pre-accident employment duties. Should you be off work again due to the injuries sustained as a result of the subject motor vehicle accident, we would require an updated *Disability Certificate* (OCF-3) to determine your eligibility. Per Section 36(2)(3) of the SABS an applicant for a specified benefit shall submit a complete *Disability Certificate* (OCF-3) that indicates you meet the disability test. There is no entitlement to benefits for any period before the updated Disability Certificate is submitted.
>
> Should you wish to dispute this decision please refer to Mr. Patton's Rights to Dispute on the following pages. Your first step is to apply for mediation. Should you require information regarding your rights to dispute or the appropriate forms please do not hesitate to contact the writer. Please ensure you initiate your dispute within **TWO YEARS**.

[41] The LAT concluded in *17-004556 v. Aviva* that this was not a "clear and unequivocal" termination of the income replacement benefit Mr. Patton had received. The letter left open the proposition that with a further completed Disability Certificate, a further entitlement could be recognized.

[42] *17-004556 v. Aviva* was confirmed on appeal to the Divisional Court in *Traders v. Rumball*. The court found that the decision with respect to the application of the two-year limitation period was not a question of law and therefore was not subject to appeal. It also found that the LAT's finding that the letter was ambiguous was an entirely plausible interpretation of the letter.

[43] Subsequent to the decisions in this case, the Divisional Court in *Traders v Rumball* further found the finding in *17-0004556 v. Aviva* to be correct:

> [38]…Traders' "decision" is described in the first paragraph of its Letter under the heading Reasons for Decision. The "decision" has two parts. It includes not only a termination of IRBs but also the representation that Ms. Rumball may be eligible for IRBs if she is off work again and submits an updated OCF-3. There is nothing in the Letter which states that IRBs will never be paid beyond February 25, 2015 even if Ms. Rumball is off work again. As such, the first paragraph of the Letter only provides a qualified termination of IRB benefits. The second paragraph of the Letter goes on to describe the steps that Ms. Rumball needs to take if she wishes to dispute the "decision". Given that the decision found in the first paragraph of the Letter left open the possibility of her future entitlement to IRBs,

> it is not surprising that Ms. Rumball did not dispute this decision shortly after its release.
>
> [39] The Tribunal's finding that the Letter was ambiguous was not only a reasonable and "entirely plausible" interpretation (for the reasons set out in para. 25 of the Preliminary Issue Decision) – it was the correct one.

[44] Aviva argues that this case can be distinguished from *Traders v. Rumball* on the facts.

[45] I find the letters in *Traders v. Rumball* and the instant case are comparable except for one important distinction. The letter in *Traders v. Rumball* contained a Right to Dispute which advised of the necessity of filing an application to dispute a decision if it reduced or denied benefits and that if an application is not made within two years from the decision the right to entitlement is lost. It did not contain a further warning that was in the Dispute Notice in Mr. Patton's case. That further warning stated: "While you are encouraged to work with your insurance company to settle your complaint, be warned that it does not extend the two year time limit to make your claim."

[46] That same warning was repeated to Mr. Patton in this case in each of the subsequent letters from Aviva.

[47] As noted by the Court of Appeal in *Bonilla v Preszler*, 2016 ONCA 759, 134 O.R. (3d) 478, at paras. 8-12, the limitation is triggered by a single event, which is the refusal by an insurer. The operation of the limitation period under the *SABS* is clear and straightforward. There is no rolling limitation period.

[48] I find that the LAT did not err in finding that the May 3, 2021 letter met the clear and unambiguous denial requirement under *Smith v. Co-operators* and started the two year limitation period.

[49] Contrary to the LAT's finding, Mr. Patton was not making the argument for the first time on Reconsideration that the denial letter was equivocal because it stated that the insurer may provide a further determination of benefits. Mr. Patton made this argument in written submissions to the LAT on the preliminary issue hearing at para. 31. Nevertheless, this has no effect on the result, given the conclusion above that the LAT did not err in finding the May 3, 2021 letter started the two year limitation period.

[50] No authority was provided to support Mr. Patton's submission that the denial letter did not contain a valid requirement for information under s. 33 of the *SABS* or to support his argument that the denial letter was not valid because it did not comply in all respects with the *SABS*. There is no merit to these submissions.

Issue 2: Did the LAT err in failing to analyze subsequent correspondence from Aviva to Mr. Patton?

[51] Mr. Patton argues that the subsequent letters from the insurer make the May 3, 2021 letter less clear and more equivocal, thereby not meeting the requirement in *Smith v. Co-operators,* such that the limitation period was not triggered.

[52] The June 30, 2021 letter from Echelon provided: "Please provide us with your Employer's Confirmation Form (OCF-2) from FedEx in order to calculate income replacement benefits owed to yourself. We will continue to monitor your recovery needs and may provide a further determination of benefits."

[53] This is the letter relied upon in the final letter of January 24, 2024 as the valid denial, not the May 3, 2021 letter.

[54] The February 24, 2023 letter from Aviva invited Mr. Patton to contact them if he was unable to continue with his employer or had difficulties with performing his duties so that "we can review your entitlement benefits". It also calculated his entitlement to IRBs based on the OCT-2 form from Fedex and advised that based on the amount of $81.21 weekly a cheque will follow under separate cover. As noted above, although Aviva calculated the amount owing to Mr. Patton for the period November 30, 2020 to May 6, 2021 as $4,604.73, no cheque was sent under separate cover. Instead, Aviva waited until January 24, 2024, after the two years had expired, to advise Mr. Patton that they had changed their position, nothing was owed and the limitation period had expired.

[55] The LAT did not address these letters in the Decision. In the Reconsideration Decision, the LAT made the conclusory statement that the letters did not detract from the validity of the denial notice or restart the limitation period.

[56] These letters add to the confusion in this matter and suggest that Aviva did not deal fairly with Mr. Patton. However, the subsequent correspondence does not result in a conclusion that the LAT erred or that its decisions were unreasonable for two reasons. First, each of the subsequent letters attached a Dispute Notice which advised Mr. Patton that working with the insurance company to settle the complaint did not extend the two-year time limit to make the claim. Second, Mr. Patton's appeal and application to the LAT challenged the denial of IRBs for "the period November 25, 2021 to date and ongoing". Thus, the period for which Aviva had promised the cheque was being sent out was not part of the claim before the LAT.

Issue 3: Did the LAT err with respect to the legal standard for a valid denial of benefits?

[57] Mr. Patton asserts that the LAT erred by finding that only a breach of s. 54 of the *SABS*, which requires written notice of the right to dispute the denial of benefits, would invalidate that denial of IRBs. Relying on *Smith v. Co-operators*, Mr. Patton argued that a failure to comply with procedural requirements under the *SABS* invalidates the denial of IRBs.

[58] Contrary to Mr. Patton's arguments, the reasons in *Smith v. Co-operators* were limited to s. 71 of the *SABS* (now s. 54). The fact that an insurer gave a clear and unequivocal denial of benefits and subsequently failed to comply with the procedural requirements under the *SABS* does not invalidate the denial and prevent the two-year limitation period from running. Such an interpretation would nullify the two-year limitation period.

[59] The LAT did not err with respect to the legal standard for a valid denial of benefits. This case is governed by *Sietzema v. Economical Mutual Insurance Co.*, 2014 ONCA 111, 118 O.R. (3d) 713, in which the court held, at paras. 15-16

> [15] There is nothing in the *Insurance Act* or the comprehensive *SABS* regime to require an insurer, on termination of benefits, to give the claimant a further notice advising that he or she may have a right to renew a claim for a benefit that had previously been denied. As this court observed in *Haldenby v. Dominion of Canada General Insurance Co.* (2001), 55 O.R. (3d) 470, (C.A.), at para. 30,
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> > . . . there is no provision in the [Insurance Act] or the SABS which allows a claimant to reapply for further benefits after an insured person's benefits have been terminated by the insurer. The only remedy for the insured person is to appeal the termination of benefits within the two-year period.
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> [16] If we accepted the appellant's argument, the limitation period for making a claim for non-earner benefits never began to run. This would defeat one of the primary purposes of the SABS regime, namely, to ensure the timely submission and resolution of claims for accident benefits.

Issue 4: Did the LAT breach procedural fairness in the Reconsideration Decision by raising issues not raised by the parties?

[60] These issues raised by LAT on its own initiative were primarily in relation to new arguments raised by Mr. Patton that were not appropriate to raise on reconsideration. The LAT was obligated pursuant to r. 18.1 of the *Licence Appeal Tribunal Rules* to comply with specific criteria for granting reconsideration. It was required by r. 18.1 to reject any new arguments that could have been raised at the first instance hearing. The LAT made no error.

Issue 5: Did the LAT err in denying Mr. Patton's request to extend the limitation period?

[61] Mr. Patton submits that the LAT erred in denying his application to extend the limitation period for his claim. Contrary to the LAT's findings, Mr. Patton asserts that he had a *bona fide* intention to appeal the denial of his IRBs within the limitation period. Based on the unclear communications from the insurers, he thought they would reconsider his entitlement to benefits. When he learned that the IRBs were denied, he acted immediately to challenge that decision.

[62] Further, Mr. Patton argued that the LAT erred in analyzing the delay in his commencing the proceeding. Mr. Patton alleges the following errors:

1. The LAT did not determine the length of the delay. In fact, Mr. Patton took steps to appeal once he knew IRBs were denied.

2. The LAT also did not consider the prejudice to Mr. Patton in denying his request to extend the limitation period, instead only considering potential prejudice to Aviva. While the LAT acknowledged this error on Reconsideration, it stated that the outcome would not be different and it therefore still has not considered the issue. In fact, there is significant prejudice to Mr. Patton because he is unable to claim IRBs both from the past and since his resignation.

3. There was no prejudice to Aviva arising from the delay. It was actively adjudicating the file and had access to the relevant record and assessments.

4. The LAT improperly considered systemic prejudice associated with not enforcing deadlines, which is not sufficient to deny an extension: see *Manuel v. Ontario, (Motor Vehicle Dealers Act, 2002, Registrar)*, 2012 ONSC 1492, 290 O.A.C. 185 (Div. Ct.)).

[63] Mr. Patton argued that the LAT found his claim had a reasonable chance of success and therefore it should have granted him an extension of the limitation period.

[64] The fact that Mr. Patton did not understand the May 3, 2021 letter to be a denial does not show that he had a *bona fide* intention to dispute the denial within the limitation period. The LAT found that Mr. Patton did not file an application until November 24, 2023, which is a six-month delay and provided no explanation for the delay. The LAT found that delay to be significant. On reconsideration, it found that it had erred by not considering whether there was prejudice to the respondent. However, it found that this error was not material because it would not have changed the outcome.

[65] The LAT made no finding that Mr. Patton's claim had a reasonable chance of success. On reconsideration, the LAT found that it had not erred by failing to assess whether Mr. Patton's appeal had a reasonable chance of success as it had noted Mr. Patton's argument in this regard but found that the evidence did not tip the balance of justice in favour of granting the extension.

[66] The LAT made no reviewable error. Its exercise of discretion not to extend the limitation period is entitled to deference.

Issue 6: Did the LAT err in finding that Mr. Patton raised issues for the first time on reconsideration?

[67] Mr. Patton submits that the LAT was wrong in fact when it stated that he had not raised certain issues at the preliminary issue hearing, including:

1. Lack of communication from the insurers after they received his OCF-2 forms and whether this rendered the insurers' denial of IRBs non-compliant. Mr. Patton raised that issue at para. 17 of his submissions at the preliminary hearing.

2. The applicability of *Tomec v. Economical Mutual Insurance Co.*, 2019 ONCA 882, 148 O.R. (3d) 438, leave to appeal refused, [2020] S.C.C.A. No. 7. He could not have raised that issue at the preliminary issue hearing because he only lost his job after the preliminary issue hearing.

[68] With respect to the first submission, the LAT was wrong that this argument was being raised for the first time on reconsideration. The insurer should have communicated with Mr. Patton after receiving his OCF-2 forms. However, on the facts of this case, the insurer having failed to do so does not invalidate the denial. Mr. Patton had a number of notices of the right to dispute the refusal to provide benefits in compliance with s. 54 of the *SABS* and that the two-year time limit would not be extended because settlement with the insurance company was ongoing. As noted under Issue 3 above, that is what *Smith v. Co-operators* requires. After a clear and unequivocal denial of benefits, if the insurer was not complying with the procedural requirements of the *SABS*, the onus was on Mr. Patton to bring his application within the two-year limitation period.

[69] The second argument is considered under Issue 8 below.

Issue 7: Did the LAT err by failing on reconsideration to consider evidence that was not previously available?

[70] Mr. Patton sought to introduce on reconsideration as fresh evidence an undated resignation letter that he was no longer employed after August 2, 2024. He submits that the LAT erred by declining on reconsideration to consider his resignation letter which did not exist at the time of the preliminary hearing. He submits that the LAT erred in stating that his submissions were silent on how the letter would have affected the outcome. It affected his chance of success on appeal and gave rise to discoverability arguments.

[71] The LAT held:

> [58] As noted above, Rule 18.2(c) sets out a three-part test: 1) There is evidence that was not before the Tribunal when rendering its decision; 2) The evidence could not have been obtained previously by the party now seeking to introduce it; and 3) The evidence would likely affect the result.
>
> [59] I accept that the applicant meets part one of the test because the resignation letter was not before me when I rendered my decision. However, I find that the applicant does not meet the second part of the test, which is the evidence could not have been obtained previously by him for several reasons. First, the letter is undated and, therefore, it is unclear when it was created. Second, while the resignation letter notes that the last day of the

> applicant's employment was August 2, 2024, this does not establish that this letter was created after the hearing as argued by the applicant. Rather, this establishes that the last day of employment is August 2, 2024. The applicant has also provided no evidence to prove when this letter was created, which would be open to him to provide as he is the one who drafted it.

[72] The LAT made no error in refusing to consider an undated resignation letter. It would be inappropriate for the LAT to guess when the letter was created based on the effective date. Thus, the LAT could not determine whether the letter was available at the time of the preliminary issue hearing.

[73] In addition, the letter gives no reason for why Mr. Patton resigned. It provides no evidentiary basis linking injuries sustained in an accident 39 months earlier as being the cause for such a resignation. It does not affect whether the limitation period applies or whether Mr. Patton was entitled to IRBs.

Issue 8: Did the LAT err by failing to find that Mr. Patton was entitled to post-104 week IRBs?

[74] Mr. Patton argues that the LAT erred by stating that he provided no explanation for why he did not raise the issue of discoverability at the preliminary issues hearing. He submits that he did not discover his claim for post-104 week IRBs until after the preliminary issue hearing when he resigned from his employment. Relying on *Tomec* and *P.V. and Economical Insurance*, 2020 CanLII 12744 (ON LAT), he submits that the two-year limitation period does not bar a claim that was not discoverable during that time.

[75] On reconsideration the LAT found:

> [60] The applicant also now raises new submissions that since he is now off work altogether, he would be eligible for post-104 IRB and that in accordance with the decision of *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882 (CanLII) (*Tomec*) he has just now discovered his post-104 IRB claim and, therefore, he cannot be statute-barred. Even if I agreed that *Tomec* applies in this situation, the applicant provided no explanation on why discoverability and *Tomec* could not have been raised in his initial hearing submissions. As noted at paragraph 31 of the decision, the period in dispute for IRB [in the application] was from November 25, 2021 to date and ongoing, which encompasses both the pre-104 and post-104 period.
>
> [61] Yet, in his initial hearing submissions, the applicant did not argue that he was not claiming post-104 IRB because he had returned to work. Instead, he maintained that he was not statute barred with respect to his IRB claim because the respondent did not provide a clear and unequivocal denial. As IRB was in dispute for both the pre-104 and post-104 period, in my opinion, the applicant could have raised discoverability and *Tomec* arguments at first instance, but he chose not to do so. I am also not persuaded by the

> applicant's position that he discovered he had a post-104 IRB claim when he submitted the resignation letter because he was already claiming IRB for the post-104 period in his application to the Tribunal.
>
> [62] To summarize, the applicant has not tendered any new evidence which satisfies the three part test under Rule 18.2(c).

[76] In *Tomec*, the Court confirmed that discoverability generally provides that a limitation period will not begin to run until the material facts on which the cause of action is based are known to the plaintiff or ought to have been known through the exercise of reasonable diligence. *Tomec* dealt with a dispute for attendant care benefits by a claimant who had been designated catastrophically impaired – she could not assert a claim for attendant care benefits until and unless she was found catastrophically impaired. As such, the court found the denial of attendant care benefits before the catastrophic issue had crystalized caused the limitation not to start to run due to a lack of discoverability.

[77] The facts in *Tomec* are distinguishable from the facts in Mr. Patton's case. Mr. Patton was off work for several months after the accident and was able to and did assert a claim for IRBs to the insurer. He then returned to work for over three years and commenced this dispute while he was still working. In his LAT application dated November 24, 2023, he disputed IRBs at the rate of $400 per week for the time period of November 25, 2021 to date and ongoing which included both the pre-104 and post-104 period.

[78] In his factum at para. 22, Mr. Patton submits that at the time of the submissions in the preliminary issues hearing, he was working at Mark's Work Warehouse with considerable difficulty and cites a number of different sources in support of this.

[79] The LAT dismissed the argument regarding discoverability on reconsideration. The adjudicator was not persuaded that Mr. Patton had discovered he had a post-104 IRB claim when he submitted the resignation letter because he was already claiming IRBs for the post-104 period in his application.

[80] In *P.V. and Economical Insurance*, the insurer pre-emptively denied IRBs because the claimant was working full time when he submitted his OCF-1 and OCF-3. The claimant's condition deteriorated, and he went off work years later. In other words, his claim for IRBs had not yet been discovered when the insurer pre-emptively denied it.

[81] The facts in *P.V. and Economical* Insurance are also distinguishable from the facts in this case. Mr. Patton submitted his OCF-1, OCF-2, and OCF-10 on February 3, 2021 when he was off work following the accident. On March 22, 2021, he submitted an OCF-3, when he was still off work. The insurer denied his claim for IRBs on May 3, 2021. Mr. Patton returned to employment on May 7, 2021.

[82] I find that the Court of Appeal's reasons in *Haldenby*, at para. 30, apply to Mr. Patton:

> [T]here is no provision in the Act or the SABS which allows a claimant to reapply for further benefits after an insured person's benefits have been terminated by the insurer. The only remedy for the insured person is to appeal the termination of benefits within the two-year period.

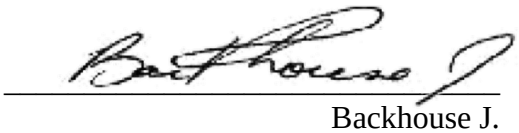
[83] Mr. Patton has not met the onus of establishing that the LAT's dismissal of his argument regarding discoverability was an error of law or unreasonable. Mr. Patton is statute barred from proceeding with his claim for post-104 week IRBs.

Conclusion

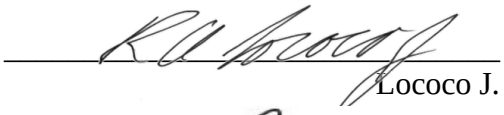
[84] The application for judicial review and appeal are dismissed.

Costs

[85] The LAT does not seek costs and asks that no costs be awarded against it. Mr. Patton and Aviva agreed on $3,000 as the quantum of costs to the successful party. Given our concern over Aviva's conduct in advising Mr. Patton that a cheque for IRBs would be forthcoming and only advising to the contrary after the limitation period had expired, no costs are awarded.



Backhouse J.



Lococo J.

Shore J.

Released: August 20, 2025

CITATION: Patton v. Aviva Insurance Co. of Canada, 2025 ONSC 4234
COURT FILE NO.: 797/24; 800/24
DATE: 20250820

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Backhouse, Lococo and Shore JJ.

BETWEEN:

CAMERON PATTON

Appellant/Applicant

– and –

AVIVA INSURANCE COMPANY OF CANADA and THE LICENCE APPEAL TRIBUNAL

Respondents

REASONS FOR JUDGMENT

Backhouse J.

Released: August 20, 2025