CITATION: Taylor v. Aviva Canada Inc., 2018 ONSC 4472
DIVISIONAL COURT FILE NO.: 465/17
DATE: 20180723

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

MARROCCO A.C.J.S.C., HARVISON YOUNG & MYERS JJ.

BETWEEN:	
JAKE TAYLOR Appellant (Respondent on Cross-Appeal)	*Tally Vanounou* and *Joshua Nightingale*, for the Appellant
– and –	
AVIVA CANADA INC. Respondent (Appellant on Cross-Appeal)	*Eric K. Grossman* and *Patrick M. Baker*, for the Respondent
– and –	
LICENCE APPEAL TRIBUNAL Intervenor	*Trevor Guy* and *Gun Koleoglu*, for the Intervenor
	HEARD at TORONTO: MAY 22, 2018

MARROCCO A.C.J.S.C.

The Context

[1] Jake Taylor, the appellant, was involved in a serious all-terrain vehicle mishap on July 11, 2015 which occurred on private rural property registered to Susan and Ross Heller. The appellant was an invited guest on the property. The all-terrain vehicle hit a tree and the appellant, a passenger in the vehicle, was seriously injured.

[2] The driver was a friend of the appellant whose parents, Laurie Stewart and Greg Ernst, had agreed to purchase the property on which the mishap occurred. The real estate transaction, however, was not scheduled to close until August 19, 2015.

[3] Aviva Canada Inc., the respondent, had provided a policy of insurance to the appellant's father which contained coverage for injuries caused by an uninsured motorist. After paying accident benefits for a period of 11 months, the respondent terminated the benefits claiming that the mishap was not an "accident" as defined by the *Statutory Accident Benefits Schedule — Effective September 1, 2010*, O. Reg. 34/10 because the all-terrain vehicle was not an automobile under the *Schedule*.

[4] The dispute between the appellant and the respondent triggered a request to the Licence Appeal Tribunal for dispute resolution.

[5] An adjudicator at the Licence Appeal Tribunal resolved the dispute on July 14, 2017. The adjudicator agreed with the respondent, holding that the mishap was not an accident as defined in section 3 (1) of the *Statutory Accident Benefits Schedule* because the all-terrain vehicle was not an automobile.

[6] The appellant requested reconsideration of the adjudicator's decision pursuant to Rule 18 of the *Licence Appeal Tribunal Rules of Practice* (the "*Rules*"). At the same time the appellant appealed the adjudicator's decision to this court, pursuant to section 11 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G.

[7] The decision of the adjudicator was reconsidered by the Executive Chair of Safety, Licensing Appeals and Standards Tribunals Ontario. The Executive Chair in reasons released on January 22, 2018 cancelled the adjudicator's decision and ordered that the matter be reheard.

[8] Both Mr. Taylor and Aviva Canada Inc. appeal the reconsideration decision.

[9] Even though the Executive Chair had cancelled the adjudicator's determination, Mr. Taylor appealed the reconsideration decision, complaining that the Executive Chair should have decided that the all-terrain vehicle was an automobile, concluded that the July 11, 2015 mishap was an accident as defined in the *Statutory Accident Benefits Schedule* and retroactively reinstated accident benefits coverage. In short, the appellant objected to the portion of the Executive Chair's reconsideration decision which directed a rehearing of the matter.

[10] Aviva Canada Inc. appealed the reconsideration decision, asking the Divisional Court to set aside that decision and restore the decision of the adjudicator.

[11] Both appeals are dismissed.

Terminology

[12] With respect to the appellant's appeal, Aviva Canada Inc. is properly styled as a respondent. However, because Aviva Canada Inc. appealed the reconsideration decision it is also

styled as the appellant on cross-appeal. For convenience sake I will refer to Mr. Taylor as the appellant and Aviva Canada Inc. as the respondent.

This court's appellate review of decisions of an adjudicator or the Executive Chair is limited by statute to a "question of law only"

[13] Section 11 (1) of the *Licence Appeal Tribunal Act, 1999* provides a party to a proceeding with the right of appeal. Specifically, the section provides as follows:

> 11 (1) Subject to subsections (2) to (6), a party to a proceeding before the Tribunal relating to a matter under any of the following Acts may appeal from its decision or order to the Divisional Court in accordance with the rules of court:
>
> … *Insurance Act*

[14] Section 11 (6) of the *Licence Appeal Tribunal Act, 1999* provides that this right of appeal in insurance matters is limited. Specifically, appeals relating to a matter under the *Insurance Act,* R.S.O. 1990, c. I.8 may be made on "a question of law only".

The appellant's appeals

[15] The appellant launched two appeals: the first from the adjudicator's decision that the mishap was not an accident as defined in the *Statutory Accident Benefits Schedule* and the second from the reconsideration decision to require a rehearing rather than deciding whether the mishap was an accident as defined in the *Schedule*.

It is possible to both appeal and ask for reconsideration

[16] Rule 18.1 of the *Licence Appeal Tribunal Act Rules of Practice* permits reconsideration of "any decision of the Tribunal".

[17] The *Licence Appeal Tribunal Act, 1999* does not indicate that the right of appeal in section 11 is restricted in any way by a request for reconsideration of the same decision.

[18] Accordingly, it is possible to both appeal a decision to the Divisional Court on a question of law only and ask the Tribunal to reconsider the same decision at the same time.

[19] The fact that both an appeal and a request for reconsideration can proceed at the same time is, however, subject to the jurisprudence of this court. This court is reluctant to hear appeals from interim or interlocutory orders of administrative decision makers for the same reason that it is reluctant to hear judicial review proceedings before the administrative decision-making process has ended. Such appeals fragment the administrative proceeding and increase costs. Accordingly, courts have interpreted language that grants an appeal from a "decision or order" of a board or tribunal as limited to an appeal of a final order (see, for example, *Roosma v. Ford Motor Co. of Canada Ltd.* (1988), 66 O.R. (2d) 18 (Div. Ct.), at para. 26; and *Rudinskas v. College of Physicians and Surgeons of Ontario,* 2011 ONSC 4819, 285 O.A.C. 218 (Div. Ct.), at

paras. 72-73). If a proceeding is "fatally flawed", an interim or interlocutory decision might be challenged. However, at such a hearing, prematurity may still be raised by the opposing party, and the court may refuse to hear the matter (see, for example, *Deutsche Bank Securities Limited v. Ontario Securities Commission*, 2012 ONSC 1576, 295 O.A.C. 1 (Div. Ct.)).

[20] While it is impossible to lay down a general rule, where a party is pursuing both an appeal and a request for reconsideration, it may be preferable for the party, after protecting its right of appeal, to seek an order delaying the hearing of the appeal until the Executive Chair has reconsidered the decision. That is because success before the Executive Chair may render an appeal to this court moot.

[21] In this matter the reconsideration request resulted in the Executive Chair cancelling the decision of the adjudicator and ordering a rehearing of the matter. While it is true that the appellant continued with his appeal of the adjudicator's decision, despite the Executive Chair's order, it is nevertheless foreseeable that, where the reconsideration request is successful as it was here, the appeal may simply be discontinued.

the appellants appeal from the adjudicator's decision is dismissed as moot

[22] In any event, given that the adjudicator's decision was cancelled, and thus there is nothing to appeal, the appellant's appeal of the adjudicator's decision should be dismissed. Accordingly, the focus is on the appellant's appeal of the reconsideration decision.

This court applies a reasonableness standard of review to reconsideration decisions of the Executive Chair

[23] The Licence Appeal Tribunal intervened in these appeals. Its factum stated that the Licence Appeal Tribunal has two main service divisions, one of which, the Automobile Accident Benefits Service, adjudicates only disputes arising under the *Insurance Act*. The adjudicator, whose decision was cancelled by the Executive Chair, was sitting as a member of the Automobile Accident Benefits Service. This statement was not contentious.

[24] The Licence Appeal Tribunal is part of Safety, Licensing Appeals and Standards Tribunals Ontario. The adjudicator's decision was cancelled by the Executive Chair of Safety, Licensing Appeals and Standards Tribunals Ontario. The Executive Chair has the same powers, duties and functions as the Licensing Appeal Tribunal's Chair. See *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5, ss. 17 (1) and (6).

[25] Reconsideration of an adjudicator's decision is provided for in Rules 18.1 to 18.4. When reconsidering a decision the Executive Chair is applying those Rules. The Licence Appeal Tribunal's *Rules* are closely connected to the Licence Appeal Tribunal's function. As a result, when the Executive Chair is reconsidering a decision of an adjudicator she is deciding questions of law, fact and mixed law and fact arising out of the application of rules closely connected to the Licence Appeal Tribunal's function.

[26] As a result, the Executive Chair is familiar with the Licence Appeal Tribunal's function and the standard of review is presumed to be reasonableness.

[27] In addition, the reconsideration decision did not decide categories of issues calling for a correctness standard, namely constitutional questions regarding the division of powers, issues both of central importance to the legal system and outside the adjudicator's home statute, true questions of jurisdiction and issues regarding the jurisdictional lines between two or more competing specialized tribunals.

[28] As a result, the presumption that the standard of review is reasonableness has not been rebutted. See *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd*., 2016 SCC 47, [2016] 2 S.C.R. 293, at paras. 22-24.

[29] Accordingly, I am satisfied that the standard of review of the Executive Chair's reconsideration decision is reasonableness.

The Executive Chair's decision to direct a rehearing of this matter is reasonable

[30] The Executive Chair did not explain why she ordered a rehearing rather than deciding whether the appellant was entitled to accident benefits.

[31] Where reasons are not given, or are not viewed as adequate, the court should first seek to supplement the reasons "before it seeks to subvert them": *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 12. This exercise includes the court looking at the record to assess the reasonableness of the decision. As the court said in *Newfoundland Nurses*, at para. 15, "[t]his means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome."

[32] What is important is whether it is possible for this court, on a review, to understand the basis upon which the decision was reached.

[33] A review of the reconsideration decision reveals the following at paragraph 45:

> 45. The Tribunal's decision of July 14, 2017 is hereby cancelled. I strongly suggest that a case conference be held to determine what is the most appropriate mode and method of hearing for this case and whether, for some witnesses or issues an in person hearing might be more appropriate.

[34] This constitutes a very strong indication that the Executive Chair thought that an in-person hearing might be necessary.

[35] The idea that an in-person hearing might be necessary is consistent with the Executive Chair's observations in paragraph 44 that this was a "complex case".

[36] It is also consistent with the Executive Chair's observations at paragraph 18 that it was unclear who occupied the property where the mishap occurred on the date of the mishap.

[37] The identity of the occupier of the property on the date of the mishap was important. The identity of the occupier was the key fact in determining who was required to pay the appellant's accident benefits.

[38] An all-terrain vehicle requires insurance under the *Off-Road Vehicles Act*, R.S.O. 1990, c. O.4 and the *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25 unless it is being driven on land occupied by owner of the all-terrain vehicle. .

[39] If insurance was required, the all-terrain vehicle was an automobile pursuant to section 224 of the *Insurance Act*. If the all-terrain vehicle was an automobile on the date of the mishap, then the mishap was an accident pursuant to section 3 (1) of the *Statutory Accident Benefits Schedule* and the respondent would be obliged to retroactively reinstate accident benefits

[40] The Executive Chair explained the lack of clarity in the evidence when she noted in paragraph 18 of her decision that, while the closing date for the real estate transaction was about a month after the mishap, there were other agreements between the sellers and the purchasers regarding the all-terrain vehicle and the rental of the property prior to the closing that in the Executive Chair's opinion the adjudicator had failed to assess.

[41] The Executive Chair also knew that the respondent had unsuccessfully requested an opportunity to cross-examine a person whose affidavit had been submitted in evidence before the adjudicator. The respondent's two requests for an adjournment to permit cross-examination were denied. The respondent applied for judicial review of those decisions and unsuccessfully attempted to obtain a prohibition order halting the adjudication. When it could not halt the adjudication, it abandoned the initial judicial review application.

[42] The Executive Chair's order that the matter be reheard gave the respondent the opportunity to both file evidence contradicting the appellant's affidavit evidence and renew its request for permission to cross-examine with the benefit of the Executive Chair's observation in paragraph 45 that consideration be given to an in-person hearing.

[43] The appellant's counsel in her submissions requesting reconsideration also complained that there was a denial of natural justice and procedural fairness because "the adjudicator could have and should have provided the injured person with an opportunity to provide additional evidence or at least convene an oral hearing to allow the injured person to direct the adjudicator to the evidence she obviously overlooked. Oral hearings are consistent with natural justice and procedural fairness because they enable the adjudicator and the parties to clarify matters of evidence in law that may be apparent to some participants and not to others."

[44] Given the complexity of the case, the lack of clarity in the assessment of the evidence and the complaints by both sides about the lack of an oral hearing, it was reasonable for the Executive Chair to decline to decide the matter on a written record and order that the matter be reheard after consideration had been given at a case conference to permitting oral evidence.

[45] I am satisfied that the Executive Chair's decision to order that this matter be reheard was reasonable. Accordingly, the appellant's appeal is dismissed.

Whether the all-terrain vehicle is an automobile is not a question of law

[46] Although not necessary to resolve the appellant's appeal, I note that the appellant asked this court not only to allow an appeal from the Executive Chair's decision but also to make the decision that it submitted the Executive Chair ought to have made, namely that the all-terrain vehicle was an automobile and that the appellant's benefits be immediately and retroactively reinstated.

[47] Even if the appellant's appeal had been successful, this court has no jurisdiction to make that order. Pursuant to section 11 (6) of the *Licence Appeal Tribunal Act, 1999*, this court can only consider questions of law only, and, as explained below, whether the all-terrain vehicle is an automobile in the context of this matter is not a question of law only.

[48] The Court of Appeal's decision in *Adams v. Pineland Amusements Ltd*., 2007 ONCA 844, 88 O.R. (3d) 321 provides the following three-part test to determine whether a motor vehicle is considered an automobile:

> Is the vehicle an "automobile" in the ordinary sense of the word?
>
> If not, is the vehicle defined as an "automobile" in the wording of an insurance policy? and
>
> If not, does the vehicle fall within any enlarged definition of "automobile" in any relevant statute?

[49] An affirmative answer to any of these questions leads to the conclusion that the vehicle is an "automobile" within the meaning of the *Statutory Accident Benefits Schedule*.

[50] The parties agreed that an all-terrain vehicle is not an automobile in the ordinary sense of the word.

[51] There was evidence before the adjudicator that the purchasers of the property purchased the all-terrain vehicle prior to the mishap. However, the fact of the purchase is in dispute.

[52] Resolving this factual issue is important.

[53] With respect to the second branch of the test, if the purchase of the all-terrain vehicle took place prior to the mishap, then it could have been added to the purchasers' existing automobile insurance policy as a newly acquired vehicle and this is exactly what Laurie Stewart and Greg Ernst attempted to do. If the all-terrain vehicle was successfully added to the purchasers' existing automobile insurance policy, then it is defined as an automobile by that policy, the mishap is an accident as defined by the *Statutory Accident Benefits Schedule* and the appellant should have continued to receive accident benefits.

[54] With respect to the third branch of the test, as discussed above, the question of whether the all-terrain vehicle was being driven on land occupied by the owner also determined whether it was an automobile under the various statutes at play.

[55] Whether, and on what terms Laurie Stewart and Greg Ernst purchased the all-terrain vehicle prior to the mishap must be determined before a court or adjudicator can apply the *Adams* test and decide whether the all-terrain vehicle is an automobile.

[56] Accordingly, whether the all-terrain vehicle is an automobile in the context of this matter is not a "question of law only", and thus this court does not have jurisdiction to make that determination.

The respondent Aviva Canada Inc.'s appeal

The Executive Chair applied the standard of review provided for in Rules 18.1 to 18.4

[57] The respondent objected to the reconsideration decision in part because it showed "absolutely no deference to the adjudicator's decision."

[58] The respondent also submitted that the rules governing reconsideration do not grant the Executive Chair "open season to engage in wholesale reweighing of evidence, nor does it allow her to substitute her own views on the evidence for that of the Tribunal."

[59] I do not accept either of these submissions.

[60] Reconsideration of an adjudicator's decision is specifically prescribed in Rules 18.1 to 18.4 of the *Rules.*

[61] The Licensing Appeal Tribunal's authority to make rules is statutorily grounded.

[62] Specifically, section 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 provides as follows:

> 25.1 (1) A tribunal may make rules governing the practice and procedure before it.
>
> (2) The rules may be of general or particular application.
>
> (3) The rules shall be consistent with this Act and with the other Acts to which they relate.
>
> …
>
> (5) Rules adopted under this section are not regulations as defined in Part III (Regulations) of the *Legislation Act, 2006*.

> (6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act.

[63] In addition, section 3(2) of the *Licence Appeal Tribunal Act, 1999* provides as follows:

> 3 (2) Except as limited by this Act, the Tribunal has all the powers that are necessary or expedient for carrying out its duties.

[64] Section 6 (1) of the *Licence Appeal Tribunal Act, 1999* provides as follows:

> 6 (1) The Tribunal may make rules establishing procedures for hearings held by the Tribunal and the rights of parties to the hearings including,
>
> > (a) rules requiring that, despite any other Act, parties shall submit disagreements to mechanisms of alternate dispute resolution that are set out in the rules before they are entitled to a hearing before the Tribunal on the subject matter of the disagreement; and
> >
> > (b) rules applicable if a member of the Tribunal conducting a hearing is unable to continue to conduct the hearing for any reason.

[65] The jurisdiction of the Executive Chair when reconsidering an adjudicator's decision is provided for in the *Rules*:

> 18.1 The Executive Chair of SLASTO may, upon request of a party or on his or her own initiative reconsider any decision of the Tribunal if the request is made within 21 days of the date of the decision.
>
> A request for reconsideration from a party must be served on all other parties and must include:
>
> > (a) Reasons for the request, specifying applicable criteria under Rule 18.2;
> >
> > (b) Notification if the party is seeking judicial review or pursuing an appeal in relation to the decision; and
> >
> > (c) Remedy or relief sought.
>
> 18.2 A request for reconsideration will not be granted unless the Executive Chair is satisfied that 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.
>
> 18.3 The Executive Chair shall not grant a request for reconsideration without providing all parties an opportunity to make submissions.
>
> 18.4 Upon consideration of a request for reconsideration, the Executive Chair may:
>
> (a) Dismiss the request; or
>
> (b) After providing all parties an opportunity to make submissions,
>
> (i) Confirm, vary, or cancel the decision or order; or
>
> (ii) Order a rehearing on all or part of the matter.

[66] Rule 18.1 provides in part that the Executive Chair may on his or her own initiative reconsider a decision of the Tribunal. The Executive Director has a specifically delineated role in the adjudicative process. She exercises a power to reconsider the adjudicator's decision on the delineated bases.

[67] Rule 18.2 provides in part that the Executive Chair can correct significant errors of fact or law which would have likely affected the result. This suggests a correctness standard of review is to apply.

[68] Rule 18.4 provides in part that the Executive Chair may vary the decision of an adjudicator. This does not suggest a deferential standard of review.

[69] The Executive Chair's decision makes it clear that she is applying the jurisdiction given to her by the *Rules*. For example, the Executive Chair makes the following observation in paragraph 3 of the reconsideration decision:

> I find that the Tribunal made significant errors in rendering its decision.

[70] Rule 18.2 (b) makes it clear that the Executive Chair can review for "significant errors". The Rule does not authorize a "wholesale reweighing of evidence". The errors of fact or law must be significant, that is, of such a nature "that the Tribunal would likely have reached a different decision".

[71] The Executive Chair described in her reasons the "errors" with which she was concerned. For example, she referred to errors in the Tribunal's assessment of the evidence (para. 13), the failure to assign appropriate weight to affidavit evidence (para. 22), the failure to address relevant evidence (paras. 6 and 27) and the failure to address whether the all-terrain vehicle was defined as an automobile in the wording of an insurance policy (para. 8). The Executive Chair explained in her reasons the significance of the errors and their effect on the decision reached by the adjudicator.

[72] The respondent submitted that this court has overturned rehearing orders based on a rejection of the weighing of evidence and factual findings of the first instance decision maker. The respondent cited Municipal Property Assessment Corporation v. Snab Holdings Limited, 2013 ONSC 2388, 10 M.P.L.R. (5th) 247 (Div. Ct.).

[73] I reject this submission.

[74] The Municipal Property Assessment Corporation v. Snab Holdings Limited decision is of little assistance. In Municipal Property Assessment Corporation v. Snab Holdings Limited, the Chair's reconsideration decision was overturned because the Chair erroneously concluded that the Assessment Review Board acted in a procedurally unfair way by wrongly excluding evidence when in fact the Assessment Review Board had admitted the evidence but attached no weight to it. This court concluded that there was no procedural unfairness in a panel of the Assessment Review Board attaching no weight to evidence.

[75] In conclusion, despite not having articulated the standard of review, I am satisfied that the Executive Chair applied Rules 18.1, 18.2 and 18.4 in concluding that the adjudicator's decision had to be cancelled. I am satisfied that in applying these Rules the Executive Chair applied the correct standard of review. This decision was one that was reasonably open to her on the evidence. She made no errors of law. As such, there is no basis for this court to intervene in the decision.

The Executive Chair's decision ordering a rehearing took into account the respondent's complaint that it was denied procedural fairness by the adjudicator

[76] The respondent submitted that its complaints about a denial of procedural fairness were ignored by the Executive Chair.

[77] I reject this submission.

[78] The respondent wanted the opportunity to test, by cross-examination, affidavit evidence filed by the appellant. Its request was refused at the adjudication level. The respondent claimed the refusal was procedurally unfair. However, when the adjudication decision was released, it turned out that the adjudicator agreed with the respondent's position on the merits and as a result the respondent quite reasonably ceased to be concerned about the perceived procedural unfairness.

[79] Assuming, without deciding, that the respondent should have been given the opportunity to test the affidavit evidence, it is unclear why a procedural failure in this regard

should have resulted in a decision by the Executive Chair confirming the adjudicator's decision on the merits of the dispute. The Executive Chair could not assume anything about the cross-examination because there was no cross-examination.

[80] It is also unclear why the adjudicator's purported unfair treatment of the respondent should result in this court restoring the adjudicator's procedurally unfair decision (according to Aviva) by allowing the respondent's cross-appeal.

[81] If the Executive Chair in her reconsideration decision had decided the matter in favour of the appellant and ordered the reinstatement of benefits, then the unfairness of which the respondent complains would have been a matter for this court to consider. However, the Executive Chair ordered a rehearing which allows the respondent to renew its attempts to cross-examine and gives the respondent the opportunity to file evidence contradicting the contentious portions of the affidavit.

Filing an appeal of a decision of an adjudicator does not stay the entire proceeding

[82] Before this court, the respondent argued that the Executive Chair could not reconsider the matter because the filing of the appellant's appeal with this court operated as a stay of the entire proceeding before the Licence Appeal Tribunal.

[83] I do not accept this submission.

[84] Section 25 (1) of the *Statutory Powers Procedure Act* provides as follows:

> 25 (1) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,
>
> > (a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or
> >
> > (b) the tribunal or the court or other appellate body orders otherwise.
>
> (2) An application for judicial review under the *Judicial Review Procedure Act*, or the bringing of proceedings specified in subsection 2 (1) of that Act is not an appeal within the meaning of subsection (1).

[85] The word "matter is not defined. Section 25 (1) also uses the word "proceeding", which is a defined term in section 1 (1) of the *Statutory Powers Procedure Act*. Specifically, a "proceeding" is defined as "a proceeding to which this Act applies".

[86] Section 25 (1) of the *Statutory Powers Procedure Act* provides as follows:

> 25. (1) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,

> (a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or
>
> (b) the tribunal or the court or other appellate body orders otherwise.
>
> (2) An application for judicial review under the *Judicial Review Procedure Act*, or the bringing of proceedings specified in subsection 2 (1) of that Act is not an appeal within the meaning of subsection (1).

[87] Section 3 of the *Statutory Powers Procedure Act* provides that the Act applies to a proceeding by a tribunal required to hold a hearing in the exercise of a statutory power of decision. The adjudicator in this appeal is a tribunal exercising a statutory power of decision as that term is defined in section 1 (1) of the *Statutory Powers Procedure Act* because the adjudicator is holding a written hearing before giving a decision which defines Mr. Taylor's right to accident benefits.

[88] Accordingly, the adjudication is a proceeding to which the *Statutory Powers Procedure Act* applies. However, The *Statutory Powers Procedure Act* contains a provision which specifically refers to reconsideration decisions. Section 21.2 (1) provides the following:

> 21.2 (1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order.
>
> (2) The review shall take place within a reasonable time after the decision or order is made.
>
> (3) In the event of a conflict between this section and any other Act, the other Act prevails. [Emphasis added.]

[89] The Rules of the Licence Appeal Tribunal deal with review or reconsideration of a decision. The plain and ordinary meaning of section 21.2 (2) is that review or reconsideration of a decision provided for in a tribunal's rules shall take place within a reasonable period after the decision.

[90] Section 21.2 contains no exceptions. In the absence of an exception, section 21.2 mandates that reconsideration take place within a reasonable time after the decision is made, even if there is an appeal. As a result, I am satisfied that section 25 (1) does not stay a request for reconsideration.

[91] Although not necessary for my decision, I note that section 25 (1) does still otherwise apply. For example, if the adjudicator had ordered the respondent to immediately and retroactively reinstate accident benefit payments to the appellant, an appeal from that decision would have automatically stayed that order.

Conclusion

[92] The appellant's appeal of the adjudicator's decision is dismissed because the adjudicator's decision has been cancelled and there is therefore nothing to appeal.

[93] The appellant's appeal of the Executive Chair's decision to order a rehearing of this dispute is dismissed because the decision to order a rehearing is reasonable.

[94] The appellant's appeal to this court to decide whether the all-terrain vehicle is an automobile is dismissed because that question in the context of this appeal is not a "question of law only" and the appellant can only appeal questions of law to this court.

[95] The respondent's cross-appeal of the Executive Chair's decision is dismissed because the Executive Chair's decision to order a rehearing is reasonable.

[96] The parties agreed that $30,000 in costs inclusive of disbursements and HST was reasonable. However, both parties achieved some success in the sense that both parties' appeals were dismissed. Accordingly, there will be no order concerning costs.

_____
MARROCCO A.C.J.S.C.

I agree _____
HARVISON YOUNG J.

I agree _____
MYERS J.

Released: 20180723

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JAKE TAYLOR

Appellant
(Respondent on Cross-Appeal)

– and –

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Respondent
(Appellant on Cross-Appeal)

– and –

LICENCE APPEAL TRIBUNAL

Intervenor

REASONS FOR JUDGMENT

Released: 20180723