CITATION: AIG Insurance Company v. Riddell, 2025 ONSC 1979
DIVISIONAL COURT FILE NO.: 575/24
DATE: 20250411

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, Matheson and Davies JJ.

B E T W E E N :	)	
	)	
AIG Insurance Company of Canada	)	*Kady Schultz and Karly Lyons*, for the Applicant/Moving Party
Applicant/Moving Party	)	
	)	
- and -	)	
	)	
Catherine Riddell	)	*Charles Gluckstein*, for Ms. Riddell
Respondent	)	
	)	
- and -	)	
	)	
Licence Appeal Tribunal	)	*Jesse Boyce*, for Licence Appeal Tribunal
Respondent	)	**HEARD at Toronto:** October 10, 2024

REASONS FOR DECISION

D.L. Corbett J.

Introduction

[1] This court rarely reviews an interlocutory order of an administrative tribunal, in this case, an order denying an adjournment request. Administrative tribunals have broad authority to regulate their own schedules, and the strong policy reasons underlying the principle of prematurity have obvious application when it comes to matters of scheduling: the orderly processing of administrative decision making would be prejudiced if this court was to start micro-managing scheduling issues: *Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541, para. 68; *Ontario College of Art v. Ontario (Human Rights Commission)* (1993), 11 OR (3d) 798 at 800 (Div. Ct.); *Kahissay* v. *Insurance*, 2023 ONSC 3650 (Div. Ct.).

[2] In this case, however, I am satisfied that there are exceptional circumstances and that this court should intervene to grant a stay of the impugned scheduling order. First, the impugned decision appears to treat scheduling challenges on a "one size fits all" basis, even though the caseload before the tribunal varies widely in length, complexity, and materiality to the parties. This was a complex case, as discussed below. The tribunal's reasons denying an adjournment give

little or no weight to the nature and complexity of this case, the legitimate competing obligations of counsel, or the prejudice to the parties if the adjournment was not granted. Second, although the impugned decision states correct principles, it fails to identify and weigh the legitimate interests of the parties and fails to balance those interests with the institutional concerns that grounded the decision. Institutional concerns matter but they should not overwhelm the legitimate interests of the parties. Third, the impugned decision is obviously wrong and unfair. These problems, together, constitute exceptional circumstances justifying judicial review of this interlocutory decision: *Toronto Transit Commission v. Amalgamated Transit Union Local 113*, 2020 ONSC 2642 (Div. Ct.), para. 10; *Ackerman v. Ontario Provincial Police*, 2010 ONSC 910 (Div. Ct.), para.19); (*Dua v. College of Veterinarians of Ontario*, 2021 ONSC 6917 (Div. Ct.), para. 21.

The Impugned Order

[3] The Respondent, Ms. Riddell, seeks to be identified as suffering from "catastrophic impairment(s)" within the meaning of the *Statutory Accident Benefits Schedule*, O. Reg. 34/10 (the "*SABS*"). The insurer, AIG, opposes this designation.

[4] Following a case conference in May 2024, the Licence Appeal Tribunal ("LAT") ordered that Ms. Riddell's application proceed to a seven day in-person hearing. In June 2024, the LAT provided the parties with a list of possible hearing dates. None were available for both sides and their witnesses (including many expert medical witnesses). Counsel asked the LAT to provide alternative possible dates. The LAT declined to provide additional dates, and instead scheduled the hearing for seven days starting on November 12, 2024, dates on which neither side was available.

[5] AIG then moved for an adjournment of the hearing and proposed mutually available dates in May 2025. Ms. Riddell did not oppose this motion and the LAT treated it as a consent request. The LAT denied the adjournment on August 30, 2024. AIG sought reconsideration, but this was denied by the LAT on October 2, 2024 on the basis that reconsideration is not available for an order that does not "finally dispose of an appeal." As a result, the case remained scheduled for hearing starting November 12, 2024.

Hearing and Order in this Court

[6] AIG applied for judicial review and moved for an interlocutory stay of the LAT proceedings pending hearing of the application for judicial review in this court. The stay motion came on before Davies J. on October 31, 2024. Davies J. directed that the motion be adjourned to an expedited hearing before a panel of this court: 2024 ONSC 6033.

[7] The panel hearing was held on November 7, 2024. At the conclusion of the hearing this court granted the motion, stayed the order below directing that the hearing commence on November 12, 2024, and directed the LAT to schedule the hearing for seven days in May 2025. We advised that these reasons for our decision would follow.

This Motion

[8] The general test for a stay is an application of the three-part test in *RJR-MacDonald Inc. v. Canada (Attorney General*, [1994] 1 SCR 311 at 334 (see also: *Kitmitto et al. v. Ontario Securities Commission*, 2023 ONSC 1739, para. 5):

> (1) whether there is a serious issue to be determined on the judicial review application;
>
> (2) whether AIG will suffer irreparable harm if the stay is not granted; and
>
> (3) whether the balance of convenience favours granting or denying the stay.

[9] The first branch of the test is a relatively low threshold in most situations, but in the case of an application for judicial review of an interlocutory order, the moving party faces a substantial burden to satisfy the court that there are exceptional circumstances that would justify hearing a premature application. Further, as observed by Davies J. at the first return of this motion, decision on the stay motion will have the effect of deciding the application itself or rendering it practically moot. As stated by the Supreme Court of Canada in *RJR Macdonald*:

> Two exceptions apply to the general rule that a judge should not engage in an extensive review of the merits. The first arises when the result of the interlocutory motion will in effect amount to a final determination of the action.

[10] In this case, a more probing inquiry of the merits is required, both as to whether there are exceptional circumstances justifying review of an interlocutory decision, and in respect to the merits of the impugned interlocutory decision. I have applied the more stringent "strong *prima facie* case" test to both aspects of the merits analysis.

Strong *Prima Facie* Case

[11] Interlocutory decisions of an administrative tribunal are not ordinarily judicially reviewed; absent exceptional circumstances, applications for judicial review should not be brought until the end of the tribunal proceedings: *College of Veterinarians of Ontario v. Mitelman*, 2015 ONSC 484 (Div. Ct.), at para. 5, *Gill v. College of Physicians and Surgeons*, 2021 ONSC 7549 at para. 31 (Div. Ct.).

[12] The threshold for establishing exceptional circumstances is high. Nonetheless, I am satisfied that the circumstances of this case are exceptional.

[13] First, Ms. Riddell's case is among the most serious and complex of cases on the LAT's docket: a contested claim of catastrophic impairment, which arises from the notorious van attack in Toronto in April 2018. The LAT hearing will be long: seven days were set for the hearing. It is anticipated that eight medical experts will testify on whether Ms. Riddell is catastrophically impaired.

[14] Second, the LAT knew that neither counsel for Ms. Riddell nor counsel for AIG were available for all the November hearing dates before those dates were set. The correspondence

shows that despite knowing that counsel were not available, the LAT went ahead and scheduled the hearing at that time.[1] Among other issues, counsel for AIG, was required in the Superior Court of Justice in Oshawa for a five-week trial scheduled to start on November 12, 2024, a date that was set prior to the LAT setting the hearing dates in this matter.

[15] Third, AIG has attempted to rectify this scheduling issue by seeking an adjournment and a reconsideration at the LAT, both unsuccessful.

[16] The LAT has the authority to control its own process: *Statutory Powers Procedure Act*, RSO 1990, c. S.22, s. 25.0.1. And the LAT's procedural orders are afforded significance deference on review. Nonetheless, it is evident that the LAT denial of the adjournment was unfair and reflected an error in principle.

[17] Rule 16.3 of the *Licence Appeal Tribunal Rules* sets out 17 factors the LAT may consider when deciding whether to grant an adjournment request:

a. The age of the file;

b. Whether any previous adjournments have been granted and, if so, whether they were granted on a peremptory basis;

c. Prejudice to the parties;

d. Whether the request is on consent;

e. The type of event the adjournment is being requested for;

f. The length of notice that the Tribunal has provided to the parties of the event;

g. The timeliness of the request;

h. Whether the parties were given the opportunity to canvass their availability;

i. The specific reasons for being unable to proceed on the scheduled date;

j. Whether the parties can proceed on an earlier date;

k. Whether the reason for the adjournment was foreseeable and avoidable, and what efforts, if any, were made to avoid the reason for the adjournment;

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[1] By the time of the hearing before us, counsel for Ms. Riddell had become available for the November hearing dates. Ms. Riddell took the position before us that she did not oppose AIG's request for relief from this court, but she was not pursuing that relief herself.

l. The length of the requested adjournment and whether it would unduly delay the proceedings;

m. Broader institutional and public interests;

n. Legislative requirements;

o. The principles of natural justice and fairness;

p. Operational considerations; and

q. Any other factors considered relevant in deciding the request.

[18] The LAT's reasons denying the adjournment focus on the undesirability of further delays. The reasons give little or no weight to the nature and complexity of this case, the competing obligations of counsel, or the prejudice to the parties if the adjournment was not granted.

[19] The LAT, in its decision, found that the parties had numerous alternatives available to an adjournment. These were not reasonable alternatives in the circumstances. It was not reasonable to suggest that the parties retain new counsel for this matter. While that could be a reasonable suggestion in some cases, this is a complex case involving senior experienced counsel. Replacing counsel should be a last resort in such a case. Second, it is not reasonable to suggest that a multi-day hearing with eight experts could, or should, proceed as an in-writing hearing: such a suggestion is inconsistent with both common sense and the LAT's initial assessment that the case requires a seven-day hearing. Third, suggesting that the parties settle the matter in order to resolve a scheduling conflict is not reasonable. Fourth, the proposal that Ms. Riddell withdraw and re-file her complaint, subject to a tolling agreement, is unreasonable: this would result, in effect, in the requested adjournment, or a longer one, but would yield no other benefit other than burnishing the LAT's "time out" statistics artificially. This suggests that LAT's priority was not the timely adjudication of this application despite the LAT's finding that granting an adjournment of 6 to 8 months would be unreasonable.

[20] The approach taken by the LAT in this case might be reasonable in a different case, with less at stake, simpler issues, and a shorter hearing. However, "one size does not fit all:" the goal is a fair, expeditious process for all cases, large and small, straightforward and complex. Achieving this goal requires more flexibility, and bearing in mind the interests of the parties, and not just the institutional concerns of the tribunal. I conclude that, in the circumstances of this case, the denial of an adjournment was unfair and unreasonable. Therefore, I conclude that AIG has established a strong *prima facie* case for exceptional circumstances to review an interlocutory decision, and a strong *prima facie* case that the impugned decision is wrong and unfair.

Irreparable Harm

[21] The LAT argued that the parties have not suffered irreparable harm because there is still an opportunity for them to request an adjournment at the start of the hearing. I do not accept that argument. The options available to the parties, as described by the LAT, are unreasonable, as I have explained. Those options did not include a further adjournment request at the outset of the

hearing. In light of the reasons given by the Vice Chair on the adjournment request, I am not prepared to conclude that the adjudicator would have come to a different conclusion if the adjournment request had been repeated at the outset of the hearing.

Balance of Convenience

[22] I see nothing "convenient" about putting the parties to the alternatives to the November hearing dates stated by the LAT. The balance in this case heavily favours staying the impugned order.

Additional Terms

[23] The effect of this decision is to set aside the denial of the adjournment. As a term of this interim order, I would set aside the November hearing dates, and direct the LAT to schedule the hearing on dates available to the parties in May 2025. The LAT confirmed during oral argument that it would be able to schedule the hearing at that time, if so directed.

This Application

[24] This is a decision on the motion for a stay. Technically, it does not decide the application. However, this decision may have the effect of rendering the underlying application moot in a practical sense. I would direct the application to a Divisional Court case management judge to canvass the parties' position on the future of the application, and to manage any further process in this court as may be required.

Disposition

[25] The panel granted this motion after the oral hearing on the following basis:

(a) The order of the LAT refusing the adjournment was stayed;

(b) The November hearing dates before the LAT were vacated;

(c) The LAT was directed to schedule the hearing on dates available to the parties in May 2025.

[26] This application for judicial review is referred to a Divisional Court case management judge to address future steps in this application.

[27] There was no request for costs.

D.L. Corbett J.

I agree: _____
Matheson J.

I agree: _____
Davies J.

Date: April 11, 2025