CITATION: Paesano v. Coseco Insurance Co., 2025 ONSC 3245
DIVISIONAL COURT FILE NO.:088/24-JR
DATE: 20250602

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: NEILA PAESANO, Applicant

AND:

COSECO INSURANCE COMPANY and LICENSE APPEAL TRIBUNAL, Respondents

BEFORE: Lococo, Shore and Jensen JJ.

COUNSEL: *Imtiaz Hosein*, for the Applicant

Daniel M. Himelfarb and *Sanjana Arora*, for the Respondent Coseco Insurance Company

Douglas Lee, for the Respondent Licence Appeal Tribunal

HEARD at Toronto: December 5, 2024

REASONS FOR DECISION

Shore J.

[1] The Applicant, Neila Paesano, is seeking judicial review of the Licence Appeal Tribunal ("LAT" or "Tribunal") decision, dated October 20, 2023 (*Paesano v Coseco Insurance Company*, 2023 CanLII 96371 (ON LAT)), dismissing the Applicant's claims for accident benefits from the Respondent, Coseco Insurance Company, arising from a motor vehicle accident on September 1, 2018.

[2] For the reasons below, the application is dismissed, with costs payable by the Applicant to the Respondent in the sum of $7,500, inclusive.

Procedural Background:

[3] The Applicant was involved in a motor vehicle accident on September 1, 2018, and sought benefits from the Respondent pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the "*SABS*" or "*Schedule*") under the *Insurance Act*, R.S.O. 1990, c. I.8.

[4] The Respondent denied the Applicant certain benefits. The Applicant applied to the LAT for a resolution of the dispute.

[5] Following an eight-day hearing, the Adjudicator released a 28-page decision on October 20, 2023 (the "Decision"), with the following findings:

(a) The Applicant is barred from claiming income replacement benefits ("IRBs") because she failed to apply for and/or qualify for the benefit within 104 weeks from the date of the accident;

(b) The Applicant did not sustain a catastrophic ("CAT") impairment;

(c) The Applicant is not entitled to any of the medical benefits, examination expenses, interest, or an award; and

(d) The Applicant is not entitled to attendant care benefits ("ACBs") to date because she did not submit proof that the expense has been incurred. She is entitled to ACBs of $905.34 per month on a go-forward basis, upon submitting proof that the expense was incurred.

[6] The Applicant's request for reconsideration was dismissed on November 29, 2023, because she missed the 21-day deadline to submit the request to the LAT.

[7] The Applicant served a request for reconsideration of the November 29, 2023, decision, and this too was dismissed.

[8] Pursuant to s. 11 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, the Applicant had a right to appeal the Decision to this court, but only on questions of law. The Applicant chose not to appeal the Decision.

[9] The Applicant commenced this application for judicial review on February 3, 2024.

Issues raised in the Application for Judicial Review:

[10] The Applicant raised the following issues in her application for judicial review:

(a) The Tribunal erred in finding that she was barred from proceeding with her claims for income replacement benefits because she failed to apply within 104 weeks;

(b) The Tribunal erred in finding that there was no catastrophic impairment under Criteria 6, 7 and 8 of the *Schedule*;

(c) The Tribunal erred in finding that she was not entitled to attendant care benefits of more than $905.34 per month;

(d) The Tribunal erred in finding that she was not entitled to rehabilitation benefits; and

(e) She was denied procedural fairness.

[11] The Respondent raised the following preliminary issues in their responding materials for this application for judicial review:

(a) If the Applicant wanted to raise issues of law, she should have done so by way of an appeal and she should not be able to raise them in an application for judicial review.

(b) The Applicant missed the deadline for serving and filing her application for judicial review and therefore the application should be dismissed.

[12] I will start by addressing the preliminary issues and then I will address each of the issues raised in the application.

Preliminary issues:

Should questions of law have been pursued by way of an appeal?

[13] Paragraph 30 of the Applicant's factum provides that the application for judicial review deals with "questions regarding errors of law, mixed law and fact, fact and procedural fairness concerns".

[14] The Respondent submits that the Applicant should not be permitted to proceed on questions of law in an application for judicial review because the Applicant has a statutory right to appeal questions of law and she chose not to bring an appeal: *Licence Appeal Tribunal Act*, s. 11(6). The Respondent submits the Applicant should have brought her appeal and application for judicial review in tandem.

[15] The Divisional Court has jurisdiction to hear a judicial review application, despite any right of appeal of the law: *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, ss. 2(1) and 6(1). The existence of a right of appeal limited to questions of law, as in this case, does not in itself amount to a discretionary bar nor 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.

[16] However, this court will not usually entertain an application or grant a remedy where the substance of the application is adequately addressed by another process, that "other process" in this case being the appeal: see *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713, at paras. 40-45. Therefore, the only issues that this court will entertain for judicial review are questions of fact and mixed fact and law (where there is no extricable question of law) as well as exercises of discretion: see *Shearer v. Oz*, 2024 ONSC 1723 (Div. Ct.), at para. 32.

[17] In reviewing the issues raised by the Applicant in her application, most of the issues raised relate to findings of fact, or issues of mixed fact and law, which are properly before this court. The question of whether the Applicant met the requirements set out in the *SABS* is a question of mixed fact and law, and barring one exception, we see no extricable legal issue in the Tribunal's analysis.

[18] The issue of the interpretation of ss. 5(1) and 6(2) of the *SABS*, as it relates to whether the Applicant is entitled to claim post-104-week IRBs without having claimed pre-104-week IRBs, is a question of law and not properly before this court.

Material served late:

[19] The Respondent submits that the Applicant's material for judicial review was served late and therefore the application should be dismissed.

[20] The Decision was released on October 20, 2023. The first reconsideration decision was released on November 29, 2023, and the second reconsideration decision was released on January 9, 2024. The Notice of Application for Judicial Review was served on February 2, 2024.

[21] The Respondent submits that the application material was due 30 days after the Decision was released and that the Applicant's material was served late. In the alternative, the Respondent submits that the material should have been served 30 days after the release of the first reconsideration decision. The Applicant has no right to seek a second reconsideration decision under the LAT's procedures. Parties should not be permitted to extend the time required to serve a notice of appeal or notice of application for judicial review by requesting further reconsideration, a step not entitled to them under the rules. I agree on this point, but the court must still consider whether the application should be permitted to proceed, from the original request for reconsideration.

[22] The test as to whether an extension should be granted was set out in *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15. The overarching principle is whether the "justice of the case" requires that an extension be given. The court is to consider all relevant circumstances, including:

(a) whether the moving party formed a bona fide intention to appeal within the relevant time period;

(b) the length of, and explanation for, the delay in filing;

(c) any prejudice to the responding parties caused, perpetuated, or exacerbated by the delay;

(d) the merits of the proposed appeal; and

(e) whether the "justice of the case" requires it.

[23] At all relevant times, the Applicant demonstrated an intention to bring her application for judicial review. The delay was minimal and explained. Counsel for the Applicant accepts responsibility for the mistake in proceeding in the wrong manner. There is no prejudice to the Respondents by the delay.

[24] The justice in this case requires that the application be permitted to proceed, even though the party was late in serving their material.

Standard of Review:

[25] The presumptive standard of review on the merits of an administrative or tribunal decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. The reasonableness standard applies to the review of the LAT's findings in this judicial review application.

[26] A reasonableness review finds its starting point in judicial restraint and respects the distinct role of administrative decision-makers. As held in *Vavilov*, a reasonable decision is one that is based on an internally coherent and rational chain analysis and is justified in relation to the facts and law that bore on the decision: *Vavilov*, at para. 85.

[27] The hallmarks of reasonableness are justification, transparency, and intelligibility: *Vavilov*, at para. 99. In *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780, 476 D.L.R. (4th) 421, at paras. 55-58, leave to appeal refused, [2023] S.C.C.A. No. 131, the Ontario Court of Appeal identified the two types of errors that may render an administrative tribunal's decision unreasonable: a failure of rationality internal to the reasoning process, and the untenability of the decision, in light of the relevant factual and legal constraints that bear on it.

[28] The focus is on the reasons of the administrative decision maker. The reviewing court's role is not to decide the issue afresh. There can be a range of reasonable outcomes, and the court must accept any decision that falls within that range.

[29] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on that basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov*, at para. 100.

[30] Regarding allegations of breaches of procedural fairness, a reviewing court must determine whether the appropriate level of procedural fairness was accorded in the decision-making process by reference to all the circumstances of the case, including the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 21-28.

General overview:

[31] The following statement is made in the Applicant's factum, at para. 7:

> The LAT's decision is replete with errors of law, mixed fact and law, and fact. The applicant seeks to challenge most every decision made due to decisions made that are in direct conflict with explicit language in statute, existing appellate authority, and the evidence and testimony that were before the decision maker.

[32] In her factum, the Applicant proceeds with a line-by-line analysis of the Decision and raises numerous objections to the findings of the Tribunal.

[33] An application for judicial review is not a rehearing of the matter that was before the LAT. The Tribunal's decision was lengthy, coherent, and well-reasoned. The Applicant may not like the outcome of the hearing, but that does not make the decision unreasonable or wrong. The court will address the key issues raised by the Applicant but will not do a line-by-line analysis of the decision.

The Applicant is barred from claiming IRBs because she missed the deadline:

[34] The Applicant was injured in a motor vehicle accident on September 1, 2018. The Applicant was a full-time dental assistant at the time of the MVA. She returned to work on September 18, 2018, and continued to work for almost three years, until August 2021.

[35] The LAT found that the Applicant did not notify the Respondent that she suffered a substantial inability to perform the essential tasks of her work as a result of the accident until August 17, 2021, 167 weeks after the accident, when she submitted an OCF-2 completed by her employer, followed by an OCF-3, submitted November 5, 2021, completed by her doctor. Thus, she is barred from making an IRB claim.

[36] The Applicant submits that the LAT erred in barring her IRB claim by incorrectly holding that s. 5(1) and s. 6(2)(b) of the *SABS* mean that an insured person "must apply for and/or qualify for the benefit" within 104 weeks from the date of the accident to receive the IRB benefit after 104 weeks from the date of the accident, and the Applicant missed the deadline. The Applicant submits that she can qualify for post-104-week IRBs even if she did not qualify for pre-104-week IRBs. She also relies on *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882, 148 O.R. (3d) 438, to support her position that the discoverability rule applies to her claim for an IRB.

[37] This issue is an issue of law, not fact or mixed fact and law. This issue should have been raised by way of an appeal. However, it can be easily disposed of and will be addressed in any event.

[38] Section 5(1)1(i) of the *Schedule* provides that an insurer shall pay income replacement benefits to an insured person who sustains an impairment as a result of an accident if the insured person was employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of that employment.

[39] Section 6 of the *Schedule* provides:

> (1) Subject to subsection (2), an income replacement benefit is payable for the period in which the insured person suffers a substantial inability to perform the essential tasks of his or her employment or self-employment.
>
> (2) The insurer is not required to pay an income replacement benefit,
>
> (a) for the first week of the disability; or
>
> (b) after the first 104 weeks of disability,
>
> unless, as a result of the accident, the insured person is suffering a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training, or experience.

[40] The Applicant submits that during the 104-week period, she must prove: (1) that she was employed at the time of the motor vehicle accident; and (2) that she suffered a substantial inability to perform the essential tasks of that employment during the 104-week period. However, she is not required to apply for those benefits by submitting her disability certificate; she can still qualify and apply for post-104-week benefits even if she has not yet received benefits, but she must prove that she suffers a complete inability to engage in any employment. I disagree.

[41] I find that the LAT's decision was correct, in finding that *SABS* is clear that an insured must apply for benefits and establish that she suffered a substantial inability within the first 104-week period to qualify for post-104 weeks IRBs. Section 6(2)(b) simply sets out the more stringent test for an insured's ongoing entitlement to the benefit. This issue of statutory interpretation was a question of law that should have been raised on appeal, but I find that even if the Applicant had followed the correct procedure, the result would have been the same: the LAT's decision was correct.

[42] Further, the LAT was reasonable and correct in finding that *Tomec*, and the principle of discoverability, are not applicable to the present case: see Decision, at para. 35.

[43] With respect to the Applicant's position that the Respondent failed to make it clear to her that she must apply for IRB benefits within 104 weeks and therefore they are estopped from arguing that she brought her application late, I also find the Applicant cannot succeed on this ground.

[44] This issue was raised before and addressed by the Tribunal: see Decision, at para. 36. The Tribunal found that the Respondent provided the Applicant with sufficient information to explain what benefits were available to her and the time limits for claiming the same. The Tribunal found that the notice was contained in correspondence sent to the Applicant on September 4, 2018, and October 1, 2018. The Tribunal also found that the failure to outline deadlines to apply for a benefit does not prevent the Respondent from relying on the requirements of the *Schedule*, in determining if the Applicant qualifies for a benefit.

[45] This aspect of the Tribunal's Decision is one of fact and open to the Tribunal based on the facts before it. The Decision in this regard is reasonable and the Applicant cannot succeed on this ground.

No catastrophic impairment under Criteria 6, 7 and 8 of the Schedule:

[46] The Applicant submits that the Tribunal erred in finding that there was no catastrophic impairment under Criteria 6, 7 and 8 of the *Schedule*.

The Tribunal's General Comments on the assessment reports:

[47] During the hearing before the Tribunal, the Applicant submitted assessment reports completed by Dr. Blitzer, a pain specialist, Laura Burnett, an occupational therapist, Dr. Kiraly, a psychiatrist, and Dr. Rogenstein, a general practitioner who prepared the executive summary. The Respondent submitted assessments completed by Dr. Mathoo, an orthopaedic surgeon, Dr. Mustafa, a neurologist, Joan Saunders, an OT, and Dr. Longhorn, a psychologist.

[48] At the outset, the Tribunal states at paras. 48 and 49 that:

> I find the CAT reports and opinions of both parties' assessors had their limitation.
>
> I find the ratings assigned by the applicant's assessors inflated related to both her accident-related physical and psychological impairments. I also find many of the ratings assigned by Dr. Blitzer unsupported by the medical record and the methodology outlines in the Guides.

[49] Throughout the decision, the Tribunal was clear where they rejected or accepted the evidence of the various assessors. The Tribunal's concern regarding the limitations of the reports very much affected the outcome of this case, as discussed below.

Criterion 6:

[50] To qualify for CAT status under Criterion 6, the Applicant must prove she has a physical impairment or combination of physical impairments that, in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment results in a 55% or more physical whole person impairment ("WPI").

[51] The Applicant submits the Tribunal erred in finding that she only had a 41% physical impairment under Criterion 6, instead of accepting her assessor's finding that she sustained a 58% physical impairment. She submits the Tribunal failed to consider all the evidence in support of her physical impairment ratings for her thoracolumbar spine, headaches, mastication, glutination, dizziness, etcetera. I disagree.

[52] Failing to accept the evidence of an assessor does not mean that the Tribunal failed to consider the evidence. By way of example, at para. 51(v) of the Decision, the Tribunal addresses the issue of the headaches and sets out the reasons why they do not accept Dr. Blitzer's ratings.

[53] The Applicant also submits that the Tribunal erred by rejecting Dr. Blitzer's rating of the headache impairment by analogy to occipital neuralgia, a practice the Applicant submits was previously accepted by the Tribunal in another case (*Syed v. Security National Insurance Company*, 2023 CanLII 26958 (ON LAT)) and that the AMA Guides allow for rating impairments by analogy.

[54] The Tribunal rejected the rating because the Applicant suffered from severe headaches prior to the accident and the Tribunal could not assess the extent to which the headaches increased post-accident. The Tribunal also had difficulty with Dr. Blitzer's testimony on this issue, in that there was no medical record to support the impairment. The Tribunal does address the *Syed* case, relied on by the Applicant, but ultimately rejects the rating for headaches based on a lack of medical evidence. The Tribunal preferred the evidence of Dr. Mustafa who did not find any evidence of occipital neuralgia during his exam. The Tribunal's finding was reasonable in this regard.

[55] Again, as with appeals, judicial reviews are not meant to be a line-by-line analysis of the decision, and the overall findings of the Tribunal are clear, transparent, consistent, and reasonable.

[56] Also, in para. 51 the Tribunal reviews and considers the evidence with respect to mastication, glutination, dizziness, the Applicant's thoracolumbar spine and the other physical impairments raised by the assessors. The Tribunal did not fail to consider the evidence, they just arrived at a conclusion that was different than the one put forward by the Applicant. This does not make the decision unreasonable.

[57] The rational of the Tribunal was reasonable, coherent, and consistent. The application cannot succeed on this ground.

Criterion 7:

[58] The Applicant submits that in considering Criterion 7 the LAT erred:

(a) in accepting the Respondent's medical assessor over that of Dr. Kiraly, the Applicant's assessor;

(b) in finding that the Applicant had a 41percent WPI under Criterion 7 and not giving any mental-behavioural WPI rating;

[59] At para. 60 of the Decision, the Tribunal rejects both the Respondent's and the Applicant's experts' ratings. In considering Criterion 7, the Adjudicator goes through a lengthy analysis and finds that the Applicant did not meet her onus of proving a psychological impairment. The Tribunal proceeds to set out the reasons it finds that the Applicant has not proven, on a balance of

probabilities, that she meets the criteria under Criterion 7, and the reasons they reject Dr. Kiraly's 40 percent rating for the Applicant's psychological impairment. The Tribunal proceeds for several paragraphs to set out the reasons they reject Dr. Kiraly's findings and have concerns about the evidence.

[60] The Tribunal concludes that they do not accept the ratings of either assessor, but it is beyond their scope to select an arbitrary number based on the evidence before them, which is why they do not provide any rating. As a result, the Applicant did not meet her onus of proving, on a balance of probabilities, that she met the 55 percent threshold to qualify for CAT status under Criterion 7. It is not the Tribunal's obligation to prove or make the Applicant's case for her.

[61] The Tribunal did not accept one assessor over the other, it rejected both assessors' evidence, a decision available to the Tribunal. The Tribunal did not give any rating for mental-behavioural WPI because the Applicant did not prove her case. This a reasonable finding based on the evidence before the Tribunal. The application cannot succeed on this ground.

[62] The Applicant also submits that the Tribunal erroneously found that Dr. Kiraly's records and tests were not available to confirm whether Dr. Kiraly followed the methodology set out in the AMA Guides. Ultimately, the Tribunal rejects Dr. Kiraly's WPI rating based on the evidence at the hearing. Given all the other reasons provided by the Tribunal in making their decision, including their finding that the results of the test administered by Dr. Kiraly’s were not consistent with the Applicant’s actual level of functioning and that the Applicant did not meet her onus, I find the Decision would not have been different had they referred to the records.

[63] The factual findings of the Tribunal are reasonable and there is no basis to set aside their decision.

Criterion 8:

[64] With respect to Criterion 8, an individual must have impairment in 3 out of the 4 spheres of functioning (activities of daily living, social functioning, concentration, persistence and pace, and adaptation) or one extreme impairment because of the accident due to a mental and behavioural disorder. Marked impairment means that the impairment levels significantly impeded useful functioning.

[65] The Tribunal found that the Applicant did not satisfy her onus of proving that she had a marked impairment in social functioning, one of three impairments relied on by her assessor. The Tribunal set out the reasons why they found that the Applicant had moderate impairment in social functioning, including that:

(a) she continued to work for a period of approximately three years following the accident and had to regularly interact with her boss, co-workers, and patients,

(b) she still communicated with her neighbour and sometimes met for coffee,

(c) she was in regular contact with and regularly visited with her father,

(d) the testimony about her relationship with her family was inconsistent but it was more likely that she maintained a close relationship with her spouse and children, and

(e) she had pre and post-accident problems in her marriage that were not related to the accident,

amongst other reasons. The panel concluded that while the Applicant sustained impartments as a result of the accident, they did not meet the CAT threshold under Criterion 8.

[66] This finding was open to the Tribunal, and I find nothing unreasonable in this decision. The Tribunal's review of the evidence was extensive, and the reasons were logical, transparent, and adequately supported by the evidence.

[67] The Applicant submits that it was an error for the Tribunal to rely on the historical fact that she continued to function at work post-accident, when the Tribunal is required to rely on the most current information, and the Applicant was no longer working. This is only one of many factors listed by the Tribunal, to find that the Applicant had moderate impairment and would not have changed the outcome of this decision.

[68] In my view, in reaching the conclusion regarding Criteria 6, 7 and 8, it was not unreasonable for the Tribunal to find that the Applicant had not met her onus. The Tribunal explained why they reached their conclusion and addressed the key issues raised by the parties.

[69] The application must fail on this ground.

Reduced attendant care benefits:

[70] The Applicant submits that the Tribunal erred in only permitting her ACBs in the sum of $905.35 per month, when the assessors all found she needed more than $6,000 per month. The maximum payable under the benefit is $6,000 per month. The Applicant is only seeking a review of the ACBs payable from May 31, 2022, and ongoing, although she initially sought review from the date of the accident.

[71] The issue in dispute relates to supervisory care. All the reports found that the Applicant needed at least 15 hours of supervisory care per day, although Coseco's expert was of the opinion that the needs were not solely as a result of an accident-related impairment. The Applicant submits that because the Tribunal rejected Coseco's expert's opinion, that the accident was not the sole cause of the impairment, they were required to conclude that the Applicant was entitled to basic supervisory care. She submits that the Tribunal erred in determining an issue that was not in dispute by the parties.

[72] The Tribunal is not obligated to accepts the assessors' findings. The Tribunal reviewed the recommendations and set out where and why they found that the time recommended was reasonable, and why other recommendations were not accepted. The Tribunal accepted the recommendations for Level 1 and Level 3 services. However, for Level 2 services, the Tribunal did not accept that the medical evidence supported 15.75 hours of supervisory care. The Tribunal found that the Applicant was capable of responding to an emergency. The Tribunal found that based on the evidence before them, there were inconsistencies in the Applicant's presentations during the various assessments and that the Applicant was more capable than she sometimes presented. The Tribunal gave examples. The Tribunal addressed and dismissed the Applicant's submissions that she needed ACBs because of her suicidal ideations, and reasons were provided.

[73] This finding was available to the Tribunal based on the evidence. There is nothing unreasonable about this finding. The application cannot succeed on this ground.

The Applicant received a fair hearing

[74] The Applicant submits that she was denied a fair hearing because:

(a) She was not permitted to call Dr. Berkhout at the hearing; and

(b) Her disclosure request was denied.

[75] The Supreme Court of Canada's decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, remains the starting point for an analysis of procedural fairness. The factors to consider include:

(a) The nature of the decision being made and the process followed in making it;

(b) The nature of the statutory scheme and the terms of the statue pursuant to which the body operates;

(c) The importance of the decision to the individual affected;

(d) The legitimate expectations of the person challenging the decision' and

(e) The choices of procedure made by the agency itself.

[76] In this case, the *Statutory Powers Procedure Act*, R.S.O. 1990, c. 22 (the "SPPA"), applied to the hearing before the Tribunal. Section 25.1(1) provides that a Tribunal may make rules governing the practice and procedure before it. Section 2 provides that any rule made by a tribunal shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. This is reiterated in r. 3.1 of the *Licence Appeal Tribunal Rules*.

[77] Rule 3.2 provides that the Tribunal may make such orders or give such directions in proceedings before it to control its process or to prevent abuse of its process.

[78] The Tribunal is in the best position to ensure that it maintains procedural fairness while balancing efficiency and participation by litigants before the Tribunal to ensure that there is natural justice: *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560. It is "the master in its own house it also had the power to determine when it was most efficient and just to conduct a hearing of the appeal": *Toronto (City) v. Avenue Road Eglinton Community Assn*., 2019 ONSC 146, 84 M.P.L.R. (5th) 239 (Div. Ct.), at para. 60.

[79] The adjudicator made several procedural orders during the hearing and the Tribunal set out the reasons for their decisions in the written Decision.

[80] The Applicant made a request on the second day of the hearing that she be permitted to call Dr. Berkhout as a witness. Dr. Berkhout was the Applicant's treating physician on her recent admission to hospital. The Tribunal found that it would be unfair to allow a witness to testify without providing sufficient notice to the other side.

[81] The Tribunal relied on r. 9.2(b) that provides that a party must give notice of the witness it intends to call along with a brief description of the witness' anticipated testimony, at least ten days prior to the hearing. Rule 9.4 prohibits a party from calling a late witness to give evidence without the Tribunal's consent. The Tribunal found that the Applicant had Dr. Berkhout's notes by May 10, 2023, but only gave notice that she intended to call him as a witness on the second day of the hearing. The Tribunal found that it would be procedurally unfair to allow Dr. Berkhout to be called as a witness.

[82] There is nothing procedurally unfair about the Tribunal's decision and the Application cannot succeed on this ground.

[83] On the fifth day of the eight-day hearing, the Applicant made a disclosure request. The Tribunal denied the request. Although the Tribunal found the requested documents were relevant, the request was made late. The Applicant could have brought a motion in advance of the hearing but elected not to do so. The Tribunal noted that many of the documents requested were not in the Respondent's possession and obtaining them at this stage would result in an adjournment of the hearing. The Tribunal found that the delay would be more prejudicial to both parties than the potential probative value of the records requested.

[84] I find nothing unfair in the procedure at the hearing. It is within the Tribunal's purview to control its own process and procedure. The application cannot succeed on this ground.

Costs:

[85] The parties agreed to costs of $7,500 inclusive to the successful party, not including the cost of the transcripts. The Respondent is therefore entitled to their costs. The LAT did not seek costs.

[86] The Applicant spent $11,000 obtaining the transcripts and is seeking reimbursement for these costs. First, the Applicant was not successful on their application for judicial review and are

not entitled to costs. Second, the transcripts were only requested recently, and the Respondent completed their materials, including factum, without having received the transcript. The transcript was not relied on or needed by the Respondent. Finally, the Applicant only requested reimbursement for the transcript two days before the application was heard. We are not prepared to order costs to cover the Applicant's disbursements in this case.

Disposition:

[87] The application for judicial review is dismissed with costs payable by the Applicant to the Respondent in the sum of $7,500 inclusive.

_____
Shore J.

I agree _____
Lococo J.

I agree _____
Jensen J.

Date: June 2, 2025