CITATION: Toronto Transit Commission v. Bering et al., 2025 ONSC 6044
DIVISIONAL COURT FILE NO.: 480/24JR
DATE: 20251031

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

LEITCH, FAIETA, SHORE, JJ

BETWEEN:	
TORONTO TRANSIT COMMISSION Applicant	*Brian Wasliw & Jackson Lund*, for the Applicant
– and –	
HARKIRANPAL BERING and WORKPLACE SAFETY & INSURANCE BOARD Respondents	No one appearing for the Respondent Harkiranpal Bering *Eric Kupka & Jean-Denis Belec,* for the Respondent Workplace Safety & Insurance Board
	HEARD: March 11, 2025

FAIETA J.

[1] The Applicant, Toronto Transit Commission ("TTC"), brings this application for judicial review for an order quashing and setting aside the decisions of the Workplace Safety and Insurance Board ("WSIB") dated January 15, 2024, and July 19, 2024. These decisions approved the settlement of an action that the worker had made about three years earlier thereby permitting him to seek "top up" benefits under s. 30 of the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Schedule A (the "*WSIA*"), even though he did not obtain the WSIB's approval before settling the action.

[2] For the reasons described below, this application for judicial review is dismissed.

Background

[3] On July 8, 2017, a TTC bus operated by the Respondent Harkiranpal Bering ("Bering") was struck by a motor vehicle. A few weeks later Bering submitted an incident report to the TTC. In turn, the TTC submitted a Form 7 - Employers Report of Injury/Disease to the WSIB.

[4] The TTC is a Schedule 2 employer under the *WSIA*. As such, it pays the full costs of workplace injury benefits to entitled workers under the *WSIA* plus an administration fee.

WSIB Notifies Bering of his Two Options

[5] On August 11, 2017, the WSIB notified Bering that he could claim either WSIB benefits or sue the owner and operator of the motor vehicle that was involved in the collision and claim benefits under his automobile insurance policy.

[6] Bering delivered a signed Election Form to the WSIB dated September 15, 2017, which indicated that he had decided not to claim WSIB benefits.

[7] A few months later, Bering commenced an action against the operator of the motor vehicle that collided with his bus as well as a claim for automobile accident benefits. The lawsuit and the accident benefits claim were settled on December 21, 2020 for the sum of $278,000.00. After deducting legal fees and disbursements, Beringer received $170,000.00.

Beringer Seeks to Apply for WSIB Benefits

[8] On September 27, 2023, almost three years after his settlement, Beringer sent the following email to the WSIB:

> I am a former TTC employee. I previously decided not to go through WSIB after a workplace accident … .
>
> During [the] period between July-September 2017, I was going back and forth between the WSIB and TTC trying to figure out my next steps but received no help or clarification on how to proceed. Because I was not making any progress through this back and forth and I was not being paid during this period, I proceeded to make a claim with Motor Vehicle Accident. I did this because no one provided me payment or financial support during this period. Through MVA, I receive some funds through mediation.
>
> If you require any further explanation, please let me know. I would like to apply for WSIB, which is what my employer should have instructed me to do … .

[9] On November 14, 2023, the WSIB invited the TTC to make submissions by December 8, 2023. In its letter, the WSIB stated:

> The primary consideration of the WSIB when reviewing a settlement under section 30(14) is whether the settlement of the third party right of action falls within the range of reasonable litigation outcomes based on the circumstances of that case.

[10] The TTC did not make submissions by the above deadline.

WSIB Approves Beringer's Settlement

[11] On January 15, 2024, the WSIB notified Bering that the WSIB had decided to approve his settlement and open his WSIB claim. The WSIB's letter states:

> … Based on the settlement documents you were able to provide to me, I understand that you settled both claims at the mediation for a total of $278,456.53. Out of that amount, you had to pay your lawyer for their legal fees and for the cost of obtaining reports and records for your lawsuit and your SAB provider claim. After those amounts were paid, you received a net amount of $170,000.00. In March 2021, your lawyer filed a Notice of Discontinuance with the Toronto Superior Court that discontinued your lawsuit against the third party without costs and with prejudice to commencing a further action.
>
> **Analysis and Decision**
>
> Based on my review, there were no significant issues related to liability in your personal injury action, but several challenges related resolving the cause of your alleged injuries and the damages flowing from those injuries. The core dispute between the parties was whether the impact of the collision between Ms. Chan's vehicle and your bus was sufficiently severe to have caused the significant physical and psychological symptoms you subsequently reported.
>
> According to the motor vehicle accident reports and photos, the accident itself was not serious. While Ms. Chan's vehicle did sustain moderate front end damage, and there was minor damage to the bus, there were no reported injuries to Ms. Chan or the passengers on the bus. The primary cause of physical injury to you appears to have been from the position of your body at the time of the rear-end jolt and tensing of your body during impact. You also reported a strong psychological impact from the sound of the vehicles colliding. According to the mediation brief your lawyer prepared in 2020, the accident caused or aggravated pain in your neck, shoulder, back, and elbow, as well as psychological issues such as anxiety and depression. The collective impact of these new injuries and aggravations, according to your claim, was that you were unable to return to your job as a bus operator and unable to return to several other activities at home.
>
> The defendants (tort and [Statutory Accident Benefits]) for their part raised several defences, primarily related to the evidence regarding causation and their doubts about the severity of the reported symptoms that did not (in their view) reasonably flow from such a minor accident. Layered over these issues was the fact you had

> ongoing disputes with your supervisor and employer regarding your complaints of harassment in your workplace, several pre-existing health conditions, and events in your personal life that caused you distress.
>
> Had this matter proceeded to trial, I have no doubt that this would have been a challenging file to litigate, and that there was considerable risk for you of a lower recovery or no recovery at all. Given this backdrop, I consider that the settlement you did accept was reasonable as it factored in the risks you faced in proving the severity of your physical and psychological impairments, and that the totality of your damages arose from the motor vehicle accident and not other causes.
>
> **Conclusion**
>
> Given my finding that your settlement of the third party action was reasonable, and that your settlement may therefore be approved under s. 30(14) of the WSIA, I am directing reopening of your WSIB claim … for adjudication.
>
> A surplus will be applied to the claim in the amount of $170,000.00, which represents your net third party recovery from the July 2017 accident. Once your claim has been adjudicated by the Board, if there are any additional benefit payments owing to you for past and ongoing entitlements after deducting the surplus amount, these may be paid to you. [Emphasis added.]

WSIB's Reconsideration Decision

[12] By letter dated January 26, 2024, the TTC delivered the following submissions which did not address the reasonableness of the settlement or any prejudice that might arise from granting approval but rather focused on the worker not having sought the approval of the WSIB prior to settling the action and the fact that such approval was sought almost three years after the settlement. The letter states in part:

> As noted in your correspondence dated November 14, 2023 and January 15, 2024 the worker settled the lawsuit and the accident benefits claims at a global mediation in December 2020. Therefore, the TTC submits that the action did not proceed to judgment; it was settled at global mediation as noted. The TTC further submits that the worker (and his legal counsel) was required to obtain prior approval of the WSIB to settle the action but failed to do so; the action was settled in December 2020 whereas the WSIB received the request for settlement approval in the fall of 2023 (almost 3 years later). The TTC submits that the worker's request for approval at this time is neither timely nor reasonable.

[13] The WSIB reviewed the TTC's submissions and by letter dated July 19, 2024 confirmed their earlier conclusion. The letter acts as a Reconsideration Decision (and is referred to as such in these reasons) and states:

I have reviewed the submissions you provided on January 26, 2024, on behalf of the employer (TTC) regarding the worker's request for settlement approval in the above-referenced claim. I previously approved the worker's request for settlement approval on January 15, 2024, after having requested submissions from both workplace parties and having not heard from the employer prior to the requested deadline. I am therefore treating this as a request for reconsideration of my January 15, 2024, decision pursuant to s. 121 of the [*WSIA*]. …

Although I understand your client's position, the WSIB respectfully maintains that it is appropriate to approve the worker's settlement.

The WSIA is remedial legislation, whose purpose is to ensure compensation for injured workers. Even workers who choose to sue over their workplace injuries are "topped up" to the amount that they would have received under the WSIA, if they do not recover that much through their lawsuit. This is the intention and effect of section 30(14). In short, all injured workers can receive at least their *WSIA* entitlement, regardless of the election they make under section 30(2).

One important condition is that where a worker settles their lawsuit, the WSIB must approve of the settlement before the worker can claim benefits under the WSIA. It is also true that section 30(14) states that the WSIB must approve of the settlement "before it is made." …

In this case, I acknowledge that the WSIB is approving the worker's settlement after it was made. However, this is a reasonable exercise of its discretion, considering the intention behind the provisions of the *WSIA* (as described above) and the amount of the settlement itself. Conversely, it would be unreasonable to forever bar the worker from WSIA entitlement because of the timing of the settlement approval.

The submissions on behalf of the employer have not addressed anything related to the reasonableness of the underlying settlement, which is the most important consideration for approval pursuant to s. 30(14). I remain satisfied that the settlement of the worker's tort action was reasonable for all the reasons given in my decision dated January 15, 2024.

Consequently, and in consideration of the merits and justice of this case, I am confirming my decision to approve the worker's settlement of his tort action and will direct that the claim be reopened. As originally directed, a surplus amount of $170,000.00 (reflecting the net settlement amount) will be applied to offset payment of any direct compensation to the worker once entitlement to benefits has been adjudicated. [Emphasis added.]

[14] TTC submits that the WSIB's decisions should be set aside on the grounds that:

(a) Under s. 30(14)2. of the *WSIA* a worker that has settled a civil action in respect of an injury is not entitled to receive benefits from the WSIB in respect of that injury unless the WSIB approved the settlement before it was made.

(b) In the event that a worker is entitled to receive benefits from the WSIB in respect of a settlement that was not approved before it was made, then the WSIB's exercise of discretion to approve the settlement of a civil action requires consideration of not only whether the settlement was reasonable.

Issues

[15] This application for judicial review raises the following issues:

(1) What is the standard of review?

(2) Was the WSIB's interpretation of s. 30(14)2. of the *WSIA* unreasonable?

(3) Alternatively, if the WSIB has the discretion to approve a settlement after it is made, was the WSIB's exercise of discretion to approve the settlement unreasonable?

Standard of Review

[16] The parties agree that the standard of review on this application for judicial review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 10. This standard was explained in *Vavilov*, at paras. 15 and 68, as follows:

> [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.
>
> …
>
> [68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the

> number of *reasonable* interpretations open to the decision maker — perhaps limiting it one. Conversely, where the legislature has afforded a decision maker broad powers in general terms — and has provided no right of appeal to a court — the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect. [Emphasis in original.]

Was the WSIB's Interpretation of Paragraph 30(14)2. of the *WSIA* Reasonable?

[17] In its Reconsideration Decision, the WSIB acknowledges that it is approving the settlement of the civil action after the settlement was made and provides the following reasons for finding that it has the authority to do so:

> (a) The purpose of the *WSIA* is to provide compensation to injured workers. Under s. 30(14) of the *WSIA*, all injured workers are entitled to receive benefits under the WSIA, regardless of whether they have elected to commence an action in respect of their workplace injuries. Workers who have pursued an action may make an application for benefits under the *WSIA* in order to be "topped up" in the event that they do not recover that much through their action.
>
> (b) It would be unreasonable to forever bar the worker from entitlement under the *WSIA* because of the timing of the worker's request for approval of their settlement.

[18] The WSIB's Decision addresses whether the settlement was reasonable but does not address the timing of the request for the approval or any considerations or prejudice that might arise from timing of the request for approval.

[19] Subsection 30(14) of the *WSIA* states:

> Election, concurrent entitlements
>
> 30 (1) This section applies when a worker or a survivor of a deceased worker is entitled to benefits under the insurance plan with respect to an injury or disease and is also entitled to commence an action against a person in respect of the injury or disease.
>
> …
>
> If worker elects to commence action
>
> (14) The following rules apply if the worker or survivor elects to commence the action instead of claiming benefits under the insurance plan:
>
> > 1. The worker or survivor is entitled to receive benefits under the insurance plan to the extent that, in a judgment in the action, the worker or survivor is awarded less than the amount described in paragraph 3.

> 2. If the worker or survivor settles the action and the Board approves the settlement before it is made, the worker or survivor is entitled to receive benefits under the insurance plan to the extent that the amount of the settlement is less than the amount described in paragraph 3.
>
> 3. For the purposes of paragraphs 1 and 2, the amount is the cost to the Board of the benefits that would have been provided under the plan to the worker or survivor, if the worker or survivor had elected to claim benefits under the plan instead of commencing the action. [Underlining added]

[20] Under s. 30(14)2. of the *WSIA*, if the WSIB approves a worker's settlement before it is made, then a worker is entitled to receive benefits under the insurance plan to the extent that the amount of the settlement is less than the cost to the WSIB of the benefits that would have been provided under the plan to the worker, if the worker had elected to claim benefits under the plan instead of commencing the action.

[21] The TTC makes the following submissions about s. 30(14)2. of the *WSIA*:

(a) Paragraph 30(14)2. of the *WSIA* is "precise and unequivocal" and requires that the WSIB approve a worker's civil settlement prior to the settlement being made in order for a worker to receive benefits under the *WSIA*.

(b) The decisions are unreasonable because they failed to apply a modern approach to statutory interpretation as they demonstrate an unreasonable departure from the express wording of s. 30(14)2. The WSIB placed undue weight on the general purpose and intent of the *WSIA*, as opposed to the text and context of the specific provisions of s. 30(14)2. of the *WSIA* to conclude the approval precondition found in s. 30(14)2. is inapplicable given the broader purpose of the *WSIA*.

[22] The rules of statutory interpretation were described by O'Conner A.C.J.O. in *Blue Star Trailer Rentals Inc. v. 407 ETR Concession Co.,* 2008 ONCA 561, 91 O.R. (3d) 321, as follows:

> [22] The Supreme Court of Canada has repeatedly endorsed Driedger's approach to statutory interpretation. Driedger's modern principle [as found in Construction of Statutes, 2nd ed.] is as follows:
>
> > Today there is only principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and intention of Parliament. *Bell ExpressVu Ltd. Partnership v. Rex*, [2002 SCC 42, [2002] 2 S.C.R. 559] at para. 26.
>
> [23] This approach to statutory interpretation — sometimes referred to as the textual, contextual or purposive approach — requires an examination of three factors: the language of the provision, the context in which the language is used and the purpose of the legislation or statutory scheme in which the language is found.

> [24] When applying this approach, it makes sense to start by examining the ordinary meaning or meanings of the words being interpreted. The ordinary meaning is "the natural meaning which appears when the provision is simply read through".
>
> [25] After considering the ordinary meaning of the language involved, the court should consider the context in which the language is found as well as the purpose of the legislation or the statutory scheme. If this analytical approach yields a plausible interpretation then the court need go no further and should adopt that interpretation. It is only when there remains genuine ambiguity between reasonable interpretations that the court should resort to other principles of statutory interpretation. [Citations omitted.]

[23] The plain meaning of “before” is “during the period of time preceding”: *Concise Oxford English Dictionary*, 12th ed. revised (Oxford: Oxford University Press, 2011), at p. 121.

[24] The purpose of the *WSIA* is stated at s. 1 and is “… to accomplish the following in a financially responsible and accountable manner:

> 1. To promote health and safety in workplaces.
>
> 2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
>
> 3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
>
> 4. To provide compensation and other benefits to workers and to the survivors of deceased workers.”

[25] When a worker is entitled to benefits in respect of an injury under the *WSIA* and is also entitled to commence an action against a person in respect of that injury, section 30 of the *WSIA*:

> (a) Obliges a worker to elect whether to claim benefits or commence the action within three months after the accident;
>
> (b) Expressly permits the WSIB to extend the three-month election period if it is just to do so; and
>
> (c) If a worker elects to claim benefits under the *WSIA* and if that worker is employed by a Schedule 2 employer, subrogates the employer to the rights of the worker in respect of the action. The employer is solely entitled to determine whether or not to commence, continue or abandon the action and whether to settle it and on what terms.

[26] Thus, while the *WSIA* states that a worker must obtain the WSIB's approval before settling an action, the Reconsideration Decision views the timing of this approval requirement as directory rather than mandatory.

[27] As noted by Rothstein J. in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 73:

> R. W. Macaulay and J. L. H. Sprague succinctly explain the mandatory/directory distinction as follows:
>
> Where a provision is imperative it must be complied with. The consequence of failing to comply with an imperative provision will vary depending on whether the imperative direction is mandatory or directory. Failing to comply with a mandatory direction will render any subsequent proceedings void while failing to comply with [a] directory command will not result in such invalidation (although the person to whom the command was directed will not be relieved from the duty of complying with it ... . [Citations omitted.]

[28] In *British Columbia (Attorney General) v. Canada (Attorney General)*, [1994] 2 SCR 41, Iacobucci J. stated at pp. 122-123:

> In particular, I think it is relevant to note that in *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, this Court commented upon the doctrinal basis of the [*Montreal Street Railway Co. v.*] *Normandin* [33 D.L.R. 195 (U.K. J.C.P.C)] distinction. The Court stated (at p. 741):
>
> > The doctrinal basis of the mandatory/directory distinction is difficult to ascertain. The "serious general inconvenience or injustice" of which Sir Arthur Channell speaks in *Montreal Street Railway Co. v. Normandin, supra*, appears to lie at the root of the distinction as it is applied by the courts.
>
> In other words, courts tend to ask, simply: would it be seriously inconvenient to regard the performance of some statutory direction as an imperative?
>
> There can be no doubt about the character of the present inquiry. The "mandatory" and "directory" labels themselves offer no magical assistance as one defines the nature of a statutory direction. Rather, the inquiry itself is blatantly result-oriented. *In Reference re Manitoba Language Rights*, supra, this Court cited *R. ex rel. Anderson v. Buchanan* (1909), 44 N.S.R. 112 (C.A.), per Russell J., at p. 130, to make the point. It is useful to make it again. Russell J. stated:
>
> > I do not profess to be able to draw the distinction between what is directory and what is imperative, and I find that I am not alone in suspecting that, under the authorities, a provision may become directory if it is very desirable that compliance with it should not

> have been omitted, when that same provision would have been held to be imperative if the necessity had not arisen for the opposite ruling.
>
> The temptation is very great, where the consequences of holding a statute to be imperative are seriously inconvenient, to strain a point in favor of the contention that it is mere directory....
>
> Thus, the manipulation of mandate and direction is, for the most part, the manipulation of an end and not a means. In this sense, to quote again from *Reference re Manitoba Language Rights*, supra, the principle is "vague and expedient" (p. 742). This means that the court which decides what is mandatory, and what is directory, brings no special tools to bear upon the decision. The decision is informed by the usual process of statutory interpretation. But the process perhaps evokes a special concern for "inconvenient" effects, both public and private, which will emanate from the interpretive result.

[29] The requirement that the WSIB approve a worker's settlement of their action is the core feature of s. 30(14)2. of the *WSIA*. While the ordinary meaning of the word "before" clearly refers to the period of time preceding an event, I find that the requirement that such approval be obtained "before" a settlement is directory rather than mandatory. The purpose of the pre-approval requirement is to ensure that the employer, by providing top up compensation, does not absorb the financial consequences of a worker's improvident settlement of an action. The worker, in settling their action, bears the risk of losing the right to apply for top up compensation if the WSIB refuses to approve a settlement made without the WSIB's approval.

[30] In that context, to conclude that the requirement that an employee shall obtain pre-approval of a settlement is mandatory would create an injustice for injured workers, particularly given that one of the purposes of the *WSIA* is to provide compensation to injured workers in a financially responsible and accountable manner. I agree with the view expressed in the Reconsideration Decision that "it would be unreasonable to forever bar the worker from WSIA entitlement because of the timing of the settlement approval". In this particular situation, depriving Mr. Bering of the substantive benefits of the *WSIA* would be contrary to *WSIA*'s purpose. Doing so would not only exemplify the type of "inconvenient effect" that Iacobucci J. warned about in *British Columbia (Attorney General)*, but it would also result in an injustice: *York Region Standard Condominium Corporation No. 1206 v. 520 Steeles Developments Inc.*, 2020 ONCA 63, 444 D.L.R. (4th) 415, at para. 33.

[31] I also note that the TTC in its submission to the WSIB did not argue that it had been prejudiced by either the substance of the settlement or the WSIB's approval of the settlement. This leads to the inference that there was no prejudice to the TTC from the settlement in this situation.

Was the WSIB's Decision to Approve the Settlement Unreasonable?

[32] The TTC submits that the decisions of the WSIB to approve the settlement were unreasonable for the following reasons:

(a) The WSIB failed to address the worker's election not to receive WSIB benefits, the fact that he made an informed decision not to pursue WSIB benefits, and the three-year delay between the settlement and the worker's decision to apply for WSIB top up compensation.

(b) The WSIB considered irrelevant factors such as the actual quantum and amount of the settlement.

[33] The Reconsideration Decision correctly noted that the most important consideration in determining whether a settlement should be approved under s. 30(14)2. is whether the settlement was reasonable. The Reconsideration Decision noted that the TTC did not make any submissions regarding the reasonableness of the settlement.

[34] Other relevant considerations include any prejudice to the assessment of the claim and determination of benefits under the *WSIA* caused by the delay in seeking top-up compensation. The fact that the worker elected not to initially receive WSIB benefits is irrelevant given that a worker is entitled under the *WSIA* to apply for top-up compensation following the settlement of an action.

[35] The WSIB considered the submissions that were placed before it. Unfortunately, the TTC's submissions did not address whether the amount of the settlement was reasonable nor whether the investigation and assessment of this claim would be prejudiced due to the passage of time. Given the evidence and submissions before it, I find that the WSIB's exercise of discretion to approve the settlement was reasonable.

Conclusion

[36] For the above reasons, this application for judicial review is dismissed.

[37] As agreed by the parties, the TTC shall pay costs of $7,500.00 to the WSIB.

Faieta J.

I agree:

Leitch J.

I agree:

Shore J.

Released: October 31, 2025

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Applicant

– **and** –

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Respondents

REASONS FOR DECISION

FAIETA J.

Released: October 31, 2025