CITATION: Economical Insurance Co. v. Abou-Gabal, 2026 ONSC 42
DIVISIONAL COURT FILE NO.: 013/25
DATE: 20260107

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BACKHOUSE, LOCOCO, SHORE JJ.

BETWEEN:	
ECONOMICAL INSURANCE COMPANY Appellant	*Martin Forget and Stephen Whibbs*, for the Appellant
– and –	
BARAAH ABOU-GABAL Respondent	*Mohamed Elbassiouni*, for the Respondent
– and –	
LICENCE APPEAL TRIBUNAL Intervenor	*Valerie Crystal* for the Intervenor
	HEARD: July 9, 2025

[1] Economical Insurance Company ("the Appellant") appeals the decision of Vice-Chair Jeremy Roberts ("the Adjudicator") of the Licence Appeal Tribunal ("LAT") dated August 9, 2024, reported at 2024 CanLII 77423 (ON LAT), and the reconsideration decision of Vice-Chair Lindsay Lake dated November 22, 2024, reported at 2024 CanLII 118762 (ON LAT).

[2] The Appellant submits that this case turns on whether Ms. Baraah Abou-Gabal ("the Respondent"), aged 24, who suffers from severe autism, resulting in significant impairment and disability, suffered additional catastrophic impairment because of a minor motor vehicle accident and is entitled to attendant care benefits. The Appellant submits that the central issue is whether a person who is already catastrophically impaired can be rendered further catastrophically impaired because of an accident.

[3] But before turning to the merits of this case, the Appellant raised a preliminary issue, whether there is a reasonable apprehension of bias.

[4] For the reasons below, I find that there is a reasonable apprehension of bias, and the matter should be remitted back to LAT for a new hearing on the merits before a different adjudicator.

[5] Having found that there was a reasonable apprehension of bias, I need not address the merits of this case.

[6] The appeal is granted, with costs to the Appellant.

Background:

[7] By the age of 14, the Respondent was diagnosed with severe autism spectrum disorder (Level 3) and suffers significant impairment due to this disorder. The Respondent requires considerable support in the areas of social communication and behaviours. She suffers from an intellectual disability and is prone to entering catatonic like states. She was removed from the public school system at a young age and did not complete her education. She wears a diaper on a regular basis. She is completely reliant on her parents and family for supervision and assistance with basic activities of daily living.

[8] On July 7, 2018, the Respondent, who was 17 years old at the time, was riding her bicycle with her brother and ran into a stopped vehicle in a parking lot. She was thrown from her bicycle.

[9] The Respondent alleges injuries from this accident, and subsequently applied to the Appellant insurer for a designation of catastrophic impairment, pursuant to s. 3.1 of the *Statutory Accident Benefits Schedule* – Effective September 1, 2010, O. Reg. 34/10 ("the Schedule"). She claimed entitlement to attendant care benefits and a variety of treatment plans.

[10] The Appellant denied the claims. The Respondent applied to the LAT for resolution of the dispute between the parties.

[11] On May 6, 2024, the matter proceeded before the LAT. The Adjudicator found that while the Respondent suffered from autism prior to the accident, her symptoms worsened as a result of the accident. The Adjudicator determined that the Respondent sustained a catastrophic impairment as a result of having an extreme impairment in the area of adaptation caused by the accident. The Adjudicator also found that the Respondent was entitled to attendant care benefits ("ACBs") in the amount of $1,920.67 per month from present, amongst other relief.

[12] The Appellant sought reconsideration on a number of grounds, including on the basis that there was a reasonable apprehension of bias.

[13] The LAT dismissed the Appellant's request for reconsideration, finding that the Appellant could have raised the issue of bias sooner, but failed to do so. The Appellant failed to provide any evidence as to why they waited until the release of the decision to raise this issue and that it was unreasonable "to wait in the weeds", only to advance the allegation of bias after receiving an unfavourable decision on certain issues. The LAT also held that in any event, the Appellant failed to rebut the presumption of impartiality.

[14] The Appellant's Notice of Appeal raises the issue of whether the Adjudicator's past involvement in support of people with autism raises a reasonable apprehension of bias.

[15] The Appellant submits that only after the hearing did they become aware of the Adjudicator's background in advocacy and continued advocacy for persons with autism, and that this advocacy constitutes a reasonable apprehension of bias.

Reasonable Apprehension of Bias:

[16] This is a case about reasonable apprehension of bias. There is no claim of actual bias.

[17] The Applicant submits that the test for a reasonable apprehension of bias was set out by the Supreme Court of Canada in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, at p. 394

> [T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly." (Emphasis added.)

See also *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, [2015] 2 S.C.R. 282, at paras. 20-26; *Wewaykum Indian Band v. Canad*a, 2003 SCC 45, [2003] 2 S.C.R. 259, at para. 60.

[18] The Supreme Court has further elaborated on judicial impartiality, bias and prejudice in *Yukon* and *Wewaykum*.

[19] The Court stated at paras. 33-34 of *Yukon*:

> 33. Judicial impartiality and neutrality do not mean that a judge must have no prior conceptions, opinions or sensibilities. Rather, they require that the judge's identity and experiences not close his or her mind to the evidence and issues. There is, in other words, a crucial difference between an open mind and empty one. Bora Laskin noted that the strength of the common law lies in part in the fact that

> the judges who administer it represent in themselves and in their work a mix of attitudes and a mix of opinions about the world in which they live and about the society in which they carry on their judicial duties. It is salutary that this is so, and eminently desirable that it should continue to be so.
>
> ("The Common Law is Alive and Well - And, Well?" (1975), 9 L. Soc'y Gaz. 92, at p. 99)

> 34. The reasonable apprehension of bias test recognizes that while judges "must strive for impartiality", they are not required to abandon who they are or what they know: [*R. v.*] *S. (R.D.)*, [[1997] 3 S.C.R. 484,] at para. 29, per L'Heureux-Dube and McLachlin JJ.; see also *S. (R.D.)*, at para. 119, per Cory J. A judge's identity and experiences are an important part of who he or she is, and neither neutrality nor impartiality is inherently compromised by them.

[20] In *Wewaykum*, at para. 58, bias or prejudice was defined as:

> a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.
>
> (*R. v. Bertram*, [1989] O.J. No. 2123 (QL) (H.C.), quoted by Cory J. *in R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 106.)

[21] The threshold for a finding of a reasonable apprehension of bias is a high one, with the burden on the party seeking to establish a reasonable apprehension of bias. Each case must be examined contextually, and the inquiry is fact-specific.

[22] There is a strong presumption of judicial impartiality that is not easily displaced. The test for reasonable apprehension of bias requires a real likelihood or probability of bias: *Yukon*, at para. 24.

[23] The Respondent refers to *Miller v. The Union of British Columbia Performers*, 2021 BCSC 1054, 2021 C.L.L.C. para. 230-042, at para. 95, aff'd 2022 BCCA 358, 2023 C.L.L.C. para. 230-021. In *Miller*, the British Columbia Supreme Court rejected an argument of reasonable apprehension of bias made on the basis that the adjudicator was an "LGBTQ+ activist". The court relied on a tribunal decision, *Oger v. Whatcott*, 2018 BCHRT 183, in which the same adjudicator was similarly accused of bias. The adjudicator dismissed the recusal request in part because the "evidence demonstrated only that the member came to the tribunal with experience in human rights law, which is not evidence of bias." The court

in *Miller* endorsed this analysis and held that the petitioner failed to demonstrate that the adjudicator was not impartial.

[24] Many of the cases relied on by the Respondent are instances where an adjudicator's involvement or actions took place prior to their appointment.

[25] There is no dispute that the Adjudicator has a significant employment and volunteer history in advocating for people with autism. The Adjudicator's younger brother has autism. I am not going to set out his entire history of his efforts in this area, as they are set out in detail in the Appellant's factum. I will highlight a few so that the context in which this decision is being made can be understood.

[26] Just prior to being appointed as an adjudicator, the Adjudicator served as a Member of Provincial Parliament from June 7, 2018, until May 3, 2022. Shortly after his term in parliament ended, he is quoted as saying: "This is the reason I ran for elected office, to make sure we were doing a better job supporting kids with special needs. I would say we're in a much better spot today than we were four years ago."

[27] The Adjudicator penned articles advocating for increased support for caregivers of those with autism spectrum disorder. The adjudicator was appointed to the LAT on December 8, 2022. He wrote another article shortly before his appointment to the LAT on August 26, 2022, in an article for thehub.ca. He discussed his role (as an MPP) in arranging a $97 million investment "to improve the experiences and lifelong outcomes for more than 1100 children and youth with complex special needs". He also outlined the difficulties his family experienced in getting improved care for his younger brother. He emphasized that supporting those with special needs was his main motivation for entering politics: "I have written elsewhere of my experience growing up with a younger brother with special needs. It was the driving force for my motivation to enter politics and continues to hold an important place in my heart."

[28] He authored another article on this topic on November 9, 2023 (approximately six months before the hearing underlying this request for reconsideration but, more importantly, it was **after** his appointment as an adjudicator) for thehub.ca. Here, Vice-Chair Roberts advocated for greater resources to be extended to caregivers and endorsed the Canadian Centre for Caregiving Excellence and the National Caregiving Summit (an organization and an event that he took part in creating).

[29] In the article, the Adjudicator reiterates that his involvement in advocacy for additional support for caregivers stems from his own experiences with his brother, who is on the autism spectrum and deals with severe developmental delays and behavioural challenges. In the article, the Adjudicator states as follows:

> It's not an exaggeration to say that without family members assisting with the care of their loved ones our health and social support systems would collapse.

> Despite their vital role in the system, caregivers receive little to no support from our governments. Because of this, they often experience high levels of burnout, mental health challenges, and difficulties maintaining jobs.
>
> A few years ago, a group of concerned citizens banded together and, with support from the Azrieli Foundation, launched the Canadian Centre for Caregiving Excellence (CCCE), our first umbrella organization to advocate for caregivers across Canada. This week, CCEC convened Canada's first National Caregiving Summit in Ottawa, which brought together hundreds of advocates, researchers, caregivers, and government partners to kick-start a discussion about how we as a society can better support these vital contributors. I was proud to be a panelist and participant.
>
> The goal is to develop a comprehensive National Caregiver Strategy, which would ensure that we have a coordinated approach nationwide for supporting caregivers. A plethora of problems could be addressed through such a strategy…
> …
> So join our conversation! Check out the updates from the summit. And talk to your elected official about what they are doing to support caregivers. Together, we can make sure that caregivers get the supports we need so that we can continue doing what matters most: caring for those we love.

[30] The biography included in the article states as follows:

> Jeremy Roberts is the former MPP for Ottawa West - Nepean and is a Senior Fellow at the Munk School of Global Affairs & Public Policy. Views expressed here are his own.

[31] While he is to be commended for his work in this area and adjudicators are not expected to abandon who they are, I accept that in this case a reasonably informed person, viewing the matter realistically and practically would conclude that the adjudicator, whether consciously or unconsciously, would not decide the matter fairly.

[32] Judges and adjudicators all have backgrounds prior to their appointment. However, once appointed, we "divorced ourselves from our past and dedicated ourselves to our new vocation": *Fogal v. Canada*, [1999] 164 F.T.R. 99 (F.C.), aff'd [2000] 258 N.R. 97 (F.C.A.), leave to appeal refused, [2001] S.C.C.A. No. 84.

[33] Public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so.

[34] The LAT declined to review the matter, largely because the issue was not previously raised by the Appellant. In the alternative, the LAT determined that the material the Appellant relied on did not demonstrate a reasonable apprehension of bias, rather it demonstrated that the Adjudicator may be considered a subject matter expert in the area of autism.

[35] On the first issue, the LAT found that because the information was publicly available before the hearing, the Appellant could have raised the matter with the Adjudicator during the hearing. I agree that a party cannot sit on information and wait to decide whether to proceed with an allegation of reasonable apprehension of bias. However, whether the material pre-dated the hearing is not determinative of the issue. A party is not expected to research an adjudicator in advance. There is a process in place for adjudicators and judges to self-disclose any potential conflicts or apprehension of bias. There was no evidence to suggest that the Appellant was aware of the information in advance. Further, the timing of such an allegation is not dispositive. I cannot conclude on the evidence before this Court that the Appellant delayed raising the issue for tactical reasons.

[36] On the second issue, I respectfully disagree with the LAT's determination that the material the Appellant relied on did not demonstrate a reasonable apprehension of bias. The concern in this case is that the Adjudicator's advocacy for people with autism and their caregivers, continued after his appointment to the LAT. Membership in an association, without more, is not a basis for concluding that a perception of bias can reasonably be said to arise. However, the Adjudicator's ongoing advocacy efforts following his LAT appointment to support caregivers for people with autism, previously described as his "driving force", is sufficient to raise a reasonable apprehension of bias when he is deciding a case specifically determining whether the claimant, who suffers from severe autism, is entitled to attendant care benefits.

[37] Once a hearing is tainted by the appearance of bias, the integrity of the decision requires that the decision in its entirety be declared void, and the entire matter is to be resubmitted for a new hearing.

[38] For the reasons above, the appeal is granted. The matter is to be remitted back to LAT for a new hearing on the merits before a different adjudicator.

[39] The parties agreed on costs of $7,500 to the successful party inclusive. The Appellant is entitled to costs of $7,500 inclusive, payable by the Respondent.

Shore J.

I agree

Backhouse J.

I agree

Lococo J.

Released: January 7, 2026

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– and –

BARAAH ABOU-GABAL

Respondent

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LICENCE APPEAL TRIBUNAL

Intervenor

REASONS FOR DECISION

Released: January 07, 2026