COURT OF APPEAL FOR ONTARIO

CITATION: Yatar v. TD Insurance Meloche Monnex, 2022 ONCA 173
DATE: 20220228
DOCKET: M53036, M53066 & M53084 (C69874)

Strathy C.J.O. (Motions Judge)

BETWEEN

Ummugulsum Yatar

Applicant (Appellant)

and

TD Insurance Meloche Monnex

Respondent (Respondent)

and

Licence Appeal Tribunal

Respondent (Respondent)

Jillian Van Allen, for the appellant

Derek R. Greenside, for the respondent TD Insurance Meloche Monnex

Valerie Crystal and Trevor Guy, for the respondent Licence Appeal Tribunal

Nabila F. Qureshi and Anu Bakshi, for the proposed intervener Income Security Advocacy Centre (M53036)

Fabio Longo and Gerry Antman, for the proposed intervener Ontario Trial Lawyers Association (M53066)

Ryan Hardy, for the proposed intervener Advocacy Centre for Tenants Ontario (M53084)

Christopher P. Thompson, for the intervener the Attorney General of Ontario

Heard: January 12, 2022 by video conference

ENDORSEMENT

[1] This proceeding is an appeal, with leave of this court, from the decision of the Divisional Court in *Yatar v. TD Insurance Meloche Monnex*, 2021 ONSC 2507. The moving parties seek leave to intervene in the appeal.

[2] The Attorney General of Ontario has requested, and I have granted, leave to intervene pursuant to s. 9(4) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1. Pursuant to that provision, the Attorney General is entitled to be heard as of right on an application for judicial review.

[3] On January 12, 2022, I granted leave to intervene to Advocacy Centre for Tenants Ontario (ACTO) and dismissed a motion for leave to intervene by Ontario Trial Lawyers Association (OTLA). I reserved my decision on a motion for leave to intervene by Income Security Advocacy Centre (ISAC) and subsequently advised counsel that ISAC's motion would be granted. My dispositions indicated that reasons would follow, and these are my reasons.

[4] The underlying proceeding is a claim by Ms. Yatar for statutory accident benefits under the *Statutory Accident Benefits Schedule – Accidents on or After November 1, 1996*, O. Reg. 403/96 ("*SABS*"). Her claim was rejected by the insurer and her benefits were terminated. After a failed mediation, she brought her claim before a Licence Appeal Tribunal ("LAT") adjudicator. The adjudicator found that

Ms. Yatar's claim was time-barred. The same adjudicator dismissed her request for reconsideration.

[5] Ms. Yatar appealed to the Divisional Court. She also brought an application for judicial review. As the Divisional Court explained, it has jurisdiction to hear a statutory appeal on a question of law under s. 11(6) of the *Licence Appeal Tribunal Act, 1999,* S.O. 1999, c. 12, Sch. G. Section 280(3) of the *Insurance Act,* R.S.O. 1990, c. I.8 and s. 2(1) of the *Judicial Review Procedure Act* preserve the right of judicial review, notwithstanding any right of appeal.

[6] The Divisional Court dismissed Ms. Yatar's appeal, finding that there was no error of law. The Divisional Court also dismissed the application for judicial review. It noted that judicial review is a discretionary remedy and it set out certain factors that it had considered in deciding whether to exercise its discretion to hear a judicial review of an application from a LAT *SABS* decision where there is no error of law. Having considered those factors, and taking them into consideration, the Divisional Court concluded, at para. 46:

> Taking all the above factors into consideration, I conclude that judicial review of a LAT SABS decision is only available, if at all, in exceptional circumstances. There are no exceptional circumstances here that would lead me to exercise my discretion to judicially review the questions of fact and mixed fact and law raised by the applicant in her judicial review application. [Emphasis added.]

[7] The proposed interventions focus primarily on the Divisional Court's observation that in cases where there is a limited statutory right of appeal, judicial review "is only available, if at all, in exceptional circumstances."

[8] I will summarize the basis on which the moving parties propose to intervene.

[9] ACTO is a legal clinic, devoted to advocacy in a number of forums concerning housing issues. It is concerned about the impact of the Divisional Court's decision on the ability of tenants to seek judicial review in the face of a limited right of appeal on a question of law under s. 210 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17. It submits that the Divisional Court's decision is inconsistent with the Supreme Court's guidance in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1, which it says created space for concurrent or alternative judicial reviews for matters subject to a statutory right of appeal.

[10] ISAC, like ACTO, is a specialized legal clinic. It focuses on advocacy related to income security, with an emphasis on social assistance and other government programs aimed at addressing poverty. Unlike ACTO, whose clients are generally seeking to retain a benefit, ISAC's clients are generally seeking a benefit, such as social assistance or income support. Much of ISAC's work takes place in administrative tribunals, such as the Social Benefits Tribunal. Its interest in the issue on appeal is because social benefits legislation generally contains a limited

statutory right of appeal. If granted leave to intervene, its submissions will focus on two issues: the interpretation of statutory rights of appeal in the context of remedial legislation; and the impact on social assistance recipients of restricting judicial review to exceptional circumstances in the face of limited appeal rights.

[11] OTLA is involved in advocacy on behalf of accident victims, among others. It submits it has "specialized knowledge and experience with accident benefits legislation and litigating accident benefit disputes on behalf of injured Ontarians." Although OTLA set out a number of proposed arguments in its factum, in oral argument it limited its proposed submissions to three: (1) the LAT adjudicator made a legal error in failing to properly apply the legal principles in s. 33 of the *SABS*; (2) the LAT's decision that the appellant's claim was time-barred was an error of law and inconsistent with this court's decision in *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882, 148 O.R. (3d) 438, leave to appeal refused, [2020] S.C.C.A. No. 7; and (3) the impact of the LAT decision for motor vehicle accident victims.

[12] In granting leave to intervene, the court looks at the nature of the case, the issues that arise and the likelihood that the proposed intervener will be able to make a useful contribution to the resolution of the appeal without injustice to the immediate parties. Part of that assessment examines the experience and perspective the proposed intervener would bring to the table at the hearing of the appeal. The court also looks to whether granting leave to intervene would cause

hardship or prejudice to the parties to the appeal. One concern, particularly in a case like this, which at its core is a civil dispute, is to ensure that the intervener(s) do not overwhelm the appeal, or “pile on” one of the parties.

[13] In this case, there can be no serious dispute that each of ACTO, ISAC and OTLA is qualified to act as an intervener in a case of this kind. They are all well-recognized organizations, with special expertise and an identifiable interest in the subject-matter of these proceedings. They each have a strong track record as interveners in important cases. And they would bring to the appeal a somewhat broader perspective that is distinct from the immediate parties.

[14] In resisting the motions for leave to intervene, the respondent on the appeal submits that this is primarily a private dispute, involving issues that are of importance only to the parties on the appeal, and that leave to intervene should not be granted. I do not accept that submission.

[15] The issue raised on the appeal – the scope of judicial review in the context of a statutory right of appeal – is an important question of law that has implications well beyond the immediate parties to the appeal. This case, therefore, is well along the continuum between constitutional litigation on the one end, and a purely private dispute at the other end. The implications of the decision to other statutory schemes make this the kind of case in which the court would benefit from the perspectives offered by interveners.

[16] I was satisfied that both ACTO and ISAC would bring a unique perspective to the appeal – a perspective that differs from the appellant's but is not inconsistent with it. They would be able to assist the court in its appreciation of the implications of the decision of the Divisional Court in other contexts where there is a limited statutory right of appeal.

[17] I concluded, however, that OTLA's submissions were largely duplicative of the submissions of the appellant on the appeal. The appellant is represented by counsel experienced in personal injury and accident benefits litigation, who is well equipped to address the issues on the appeal. Moreover, OTLA's submissions go directly to the merits of the appeal, something that should generally be left to the parties themselves. Finally, in light of my decision to grant leave to intervene to both ACTO and ISAC, I have concluded that granting leave to intervene to a third intervener would be unfair to the respondent in this case and unnecessary for the assistance of the court.

[18] The motions of ACTO and ISAC were granted on the usual terms. OTLA's motion is dismissed, without costs.

"G.R. Strathy C.J.O."