

Safety, Licensing Appeals and
Standards Tribunals Ontario
Licence Appeal Tribunal

Tribunaux de la sécurité des appels en
matière de permis et des normes Ontario
Tribunal d'appel en matière de permis



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Tribunal File Number: **17-004493/AABS**

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, RSO
1990, c. I.8, in relation to statutory accident benefits

Between:



Applicant

and

Aviva Insurance Canada

Respondent

MOTION ORDER

Order made by: Ian Maedel

Date of Order: July 18, 2018

OVERVIEW

- [1] The applicant was injured in an automobile accident on December 24, 2014 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* ("Schedule").
- [2] The applicant filed an application before the Licence Appeal Tribunal – Auto Accident Benefits Service ("Tribunal") on July 14, 2017.
- [3] This matter was first set to a case conference on October 2, 2017 before Adjudicator Treksler. At paragraph 16 of her Order, she ordered that the Ontario Disability Support Plan ("ODSP") file be produced as per the respondent's Case Conference Summary Form.
- [4] The most recent case conference for this matter was before Adjudicator Purdy on May 10, 2018. An in-person hearing was scheduled for October 2-4, 2018, in Toronto, Ontario.
- [5] The respondent filed a Notice of Motion on July 17, 2018 and sought the following relief:
 - a) An Order for production of the ODSP file in the possession of the Ministry of Children, Community and Social Services, from three years pre-accident (December 24, 2011) to date and ongoing.
- [6] The applicant did not provide any responding materials to the Notice of Motion, nor are they required.
- [7] The respondent submits the ODSP file is relevant to the application for non-earner benefits ("NEB's"), specifically to assist in a determination of whether she suffers a complete inability to carry on a normal life as a result of the accident. Central to this test is a determination regarding the applicant's pre-accident and post-accident functional ability. The respondent submits that the ODSP file will provide confirmation of the applicant's pre-accident functional ability.

ORDER

- [8] A summons shall issue directing the Ministry of Children, Community and Social Services to produce any files it may have pertaining to the applicant from three years pre-accident (December 24, 2011) to date and ongoing. A summons can only be served on an identified person. The respondent shall provide a name to the Tribunal in its request to issue a summons.

- [9] Rule 3.1 of the *Common Rules of Practice and Procedure* ("Rules") mandate a procedurally fair process that is also efficient and proportional to allow a timely resolution of matters.
- [10] The ODSP file is relevant to a determination of the NEB's in dispute. The parties would be prejudiced if they were forced to proceed to a hearing without the benefit of these documents. The ODSP file may speak directly to issues of causation of the applicant's alleged injuries and her ability to complete her regular activities of daily living both pre-accident and post-accident.
- [11] Both the applicant and respondent have made reasonable efforts to obtain the ODSP file. The applicant has requested the file from the Ministry of Social Services at least three times, including an authorization executed by the applicant with their request in April 2018. The respondent has written to the applicant nine times between August 8, 2017 and June 1, 2018 requesting the complete ODSP file.
- [12] The Tribunal's *Rules* are silent with regard to third party disclosure requests. The only authority in the Tribunal is found sec. 12.(1)(b) of the *Statutory Powers Procedure Act, R.S.O. 1990. CHAPTER S.22.*, which states:
- "A tribunal may require any person, including a party, by summons, (b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal, relevant to the subject-matter of the proceeding.."
- [13] The Ontario Court of Appeal addressed summons for production in advance of a hearing in *Ontario (Human Rights Commission) v. Dofasco Inc.*¹ Although the Court indicated the point was not argued and they expressed no final opinion the following paragraph provides useful guidance.
- [14] In paragraph 51 of the decision the Court wrote to produce documents at hearing would inevitably lead to adjournments if they are produced for the first time at the hearing. The court made reference to section 2 of the *Statutory Powers Procedure Act* which provides that the *Act* and rules made under it "shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits."
- [15] Rule 8 of the *Rules* speaks to the issuance of a summons. As per Rule 8.2, the respondent is entitled to summons a witness once they have provided the Tribunal with a brief description of the anticipated evidence. This is a low bar and witnesses are generally added if they can satisfy this low threshold. The respondent has satisfied the threshold as per Rule 8.2 in providing a description of the anticipated

¹ 2001 CanLII 2554

evidence of the unnamed witness from the Ministry of Children, Community and Social Services.

[16] The in-person hearing remains scheduled for October 2-4, 2018, in Toronto, Ontario.

[17] All remaining terms of the Orders of Adjudicator Treksler and Purdy remain in full force and effect.

Released: July 19, 2018

Ian Maedel, Adjudicator