



***The Supreme Court clarifies the approach to judicial review where a right of appeal is limited by statute to questions of law.***

This appeal concerned the proper approach to judicial review where there is a limited statutory right of appeal. It also addressed whether it was reasonable for Ontario’s Licence Appeal Tribunal (the Tribunal) to deny, in this case, an insured person’s request for benefits as time-barred.

Ummugulsum Yatar was injured in a car accident in Ontario in 2010. Her insurer, TD Insurance Meloche Monnex, initially paid her the accident benefits to which she was entitled under Ontario’s insurance legislation scheme. However, in January 2011, the insurer stopped making those payments because she failed to provide a completed disability certificate. Her income replacement benefits were reinstated briefly in February, but were again denied in September of that year.

Ms. Yatar contested the denial of her benefits before the Tribunal, which is an administrative body mandated by the provincial government to resolve, among other things, disputes about an insured person’s entitlement to motor vehicle accident benefits under the province’s insurance legislation scheme. The Tribunal dismissed her application because it was filed too late. Her subsequent request that the Tribunal reconsider its decision was also dismissed (the reconsideration decision).

Ms. Yatar decided to appeal the Tribunal’s reconsideration decision to the Divisional Court, a branch of the Ontario Superior Court. Appeals are usually brought by a dissatisfied party before a higher court to review the decision of a lower court. However, legislation can sometimes provide a right to appeal decisions made by an administrative body like the Licence Appeal Tribunal. This is referred to as a “statutory right of appeal”, as it derives from a statute (a law). According to the legislation that governed the Licence Appeal Tribunal, Ms. Yatar had a right to appeal the Tribunal’s reconsideration decision, but it was limited to alleged errors by the Tribunal on questions of law. Whereas questions of fact are about what actually took place between the parties, questions of law are about what the correct legal test is to apply in a given case.

At the same time, Ms. Yatar brought an application for judicial review before the Divisional Court. Judicial review is different from an appeal. It is a process by which courts review decisions by administrative bodies to make sure they uphold procedural fairness and are reasonable, meaning they make sense in light of the law and the facts of the case. Ms. Yatar’s application for judicial review contained questions of fact or mixed fact and law. These questions pertain to the application of the law to the facts of a case.

The Divisional Court dismissed Ms. Yatar’s appeal, holding that she failed to show that the Tribunal made an error of law in its reconsideration decision. It also dismissed her application for judicial review, stating there were no “exceptional” circumstances that would justify judicial review in this case.

Ms. Yatar appealed the Divisional Court’s decision to dismiss her application for judicial review to the Ontario Court of Appeal. The Court of Appeal dismissed her appeal. In its view, judicial review would only be available in “rare” cases, given the existing legislative scheme to resolve these disputes, including the right to ask for reconsideration of the Tribunal’s preliminary decision and the statutory right of appeal on questions of law. It concluded that the legislature had intended to limit recourse to courts on other questions arising from the administrative decision. Ms. Yatar appealed to the Supreme Court of Canada.

The Supreme Court has allowed the appeal.

**Judicial review was available to Ms. Yatar for issues not dealt with under the statutory right of appeal.**

Writing for a unanimous Court, Justice Rowe held that a right of appeal does not preclude an individual from seeking judicial review for questions not dealt with in the appeal. As he explained, where there is a statutory right of appeal limited to questions of law, judicial review is available for questions of fact or mixed fact and law.

Justice Rowe determined that it was an error for the courts below to hold that, where there is a limited right of appeal, judicial review should only be exercised in exceptional or rare cases. The limited right of appeal from the

Tribunal's decisions to pure questions of law does not reflect an intention by the legislature to restrict recourse to courts on other questions arising from the Tribunal's administrative decisions. It only denotes an intention to subject the Tribunal's decisions on questions of law to correctness review, and proceeding with judicial review on questions of fact or mixed fact and law is fully respectful of the legislature's institutional design choices.

Finally, Justice Rowe held that the Tribunal's reconsideration decision was unreasonable. Among other reasons, it failed to have regard to the effect of the reinstatement of the income replacement benefits between February and September 2011 on the validity of the initial denial. As such, Justice Rowe allowed the appeal and referred the matter back to the Tribunal for reconsideration.

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**Breakdown of the decision: *Unanimous*:** Justice [Rowe](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Martin](#), [Kasirer](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#) agreed)

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