



**Tribunal File Number: 19-009565/AABS**

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

Between:

**Adel Ahmed**

**Applicant**

and

**Aviva Insurance Company**

**Respondent**

**MOTION ORDER**

**Order made by: Ian Maedel, Vice Chair**

**Date of Order: June 23, 2021**

## OVERVIEW

- [1] The applicant was injured in an automobile accident on **August 9, 2017** and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] The applicant is 84 years old, blind, and does not speak English.
- [4] A case conference took place on **April 1, 2020** before Adjudicator John. A written hearing was scheduled for November 30, 2020.
- [5] In a Motion Order dated September 21, 2020 by Adjudicator Makhamra, it was noted that previous applicant counsel was deceased, and the written hearing was adjourned to March 29, 2021. The applicant's submissions were now due on February 22, 2021.
- [6] Respondent counsel was aware previous applicant counsel was deceased, but his firm remained retained with the matter.
- [7] On February 26, 2021 respondent counsel was advised by applicant counsel's office that alternate counsel was on maternity leave and the firm was "in transition". No written submissions were provided, and five months of silence followed.
- [8] Then, at the motion hearing on April 13, 2021, new counsel appeared as agent and indicated that, while they were not yet retained, they would be taking carriage of the file.
- [9] It should be noted that this motion hearing was adjourned several times to permit new applicant counsel to review the file and receive instructions.

## MOTION

- [10] On **March 12, 2021**, the respondent filed a Notice of Motion requesting that the Tribunal issue:
  - i. An order to dismiss the application as abandoned, pursuant to s. 3.4(d) of the Common Rules of Practice and Procedure (the "Rules").
- [11] The applicant sought costs pursuant to Rule 19 of the Rules.

## PARTIES' POSITIONS

- [12] The respondent submits the applicant failed to comply with the previous Motion Order, as he did not provide written submissions by the **February 22, 2021**

deadline. According to the respondent, it has been prejudiced by this delay, and, as a result, procedural fairness has been compromised. The respondent relies on the five months of silence from the applicant to evince this matter was abandoned. The deadlines pursuant to the previous Motion Order remained live and there was nothing done to remedy the applicant's contravention of the previous Order.

- [13] The applicant was under the impression that previous counsel was addressing this matter, as he was unaware of his previous counsel's death. The applicant admits he missed the first written submission deadline due to inadvertence. Present counsel was not retained until **April 13, 2021** and immediately took steps to remedy the situation, including getting in contact with the respondent.

## **RESULT**

- [14] Despite a clear, demonstrated intention to proceed with his application (as well as the known difficulties arising from his former counsel's passing), the respondent steadfastly maintained the applicant abandoned his application. These circumstances are exceptional, and I find the respondent has contravened its duty of good faith owed to the applicant in this matter by refusing to withdraw this motion. This pattern of behaviour demonstrated bad faith, and the applicant shall be entitled to costs pursuant to Rule 19.

## ***MOTION TO DISMISS AS ABANDONED***

- [15] The respondent's motion to dismiss this application as abandoned is dismissed.
- [16] I see no evidence this application has been abandoned. Previous counsel died, leading to a delay in the filing of written submissions as ordered. I am also not otherwise persuaded that the lack of response from the applicant between February 26 to April 13, 2021 indicated this matter was abandoned. Current counsel came on record on April 13, 2021 and since that date has demonstrated an intention to move this matter forward.

## **COSTS**

- [17] The applicant's motion for costs is granted.
- [18] Costs are a discretionary remedy imposed when a party has acted unreasonably, frivolously, vexatiously, or in bad faith pursuant to Rule 19 of the Rules. The Tribunal is also compelled to consider the criteria pursuant to Rule 19.5 in awarding costs, particularly relating to the seriousness of the misconduct, whether a party's behaviour was in breach of a direction or order issued by the Tribunal, whether or not a party's behaviour interfered with the Tribunal's ability to carry out a fair, efficient and effective process, prejudice to other parties and the impact of an order of costs would have on individuals accessing the Tribunal system.

- [19] I accept there was a delay between February 26 and April 13, 2021. During this period, the respondent was left to wonder if this matter was abandoned. However, following current counsel's retainer on April 13, 2021, the applicant clearly demonstrated an intention to move this matter forward. I am shocked the respondent continued to proceed with this motion to dismiss the application as abandoned in the circumstances (especially considering previous counsel's death and applicant's personal barriers). Instead of fulfilling its duty of good faith toward the applicant, the respondent pursued a dismissal of this matter when it must have reasonably known the applicant had not abandoned the matter.
- [20] In sum, I find the respondent has acted in bad faith, especially when it ignored the material change in circumstances and pressed on with this motion when it was obvious it lacked any merit. Instead of conducting further case management to keep this matter on track, the parties were instead forced to address this motion. In my view, this has interfered with the efficient, effective hearing process pursuant to Rule 19.5.
- [21] Costs are rarely awarded, except in the most exceptional of circumstances. Pursuant to Rule 19.6, the amount of costs shall not exceed \$1,000.00 for each day of attendance at a motion, case conference, or hearing.
- [22] The amount of costs must reflect the prejudice wrought to the parties, the deleterious effect on the efficiency of the hearing process and serve to denunciate the bad-faith conduct. Given these factors, I am prepared to award \$250.00 to the applicant, payable within 30 days.

#### **OTHER PROCEDURAL MATTERS**

- [23] The written hearing scheduled for **March 29, 2021** is adjourned.
- [24] **A case conference shall be scheduled for case management purposes on October 1, 2021 at 1:00 pm via teleconference.**
- [25] **Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.**
- [26] If the parties resolve the issue(s) in dispute prior to the hearing, **the applicant** shall immediately advise the Tribunal in writing.

**Date of Issue: June 28, 2021**

  
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**Ian Maedel**  
**Vice Chair**