



January 14, 2022

VIA E-MAIL

The Honourable Doug Downey  
Attorney General  
Ministry of the Attorney General  
McMurtry-Scott Building  
720 Bay Street, 11<sup>th</sup> Floor  
Toronto, Ontario M7A 2S9

Dear Attorney General,

**Re: Licence Appeal Tribunal Appointments**

I am writing to you as the Chair of the Ontario Bar Association's Insurance Law Section regarding the need for additional appointments to the Licence Appeal Tribunal.

The Ontario Bar Association ("**OBA**") is the largest volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides dozens of submissions to government for the profession and the public interest and delivers over 325 in-person and on-line professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

The OBA's Insurance Law Section consists of over 200 lawyers practicing in Ontario in the areas of insurance and personal injury law. The Section's membership includes lawyers who represent persons injured in motor vehicle accidents, and those who represent defendants and automobile insurers. Much of their work involves claims before the Licence Appeal Tribunal (the "**Tribunal**") for Statutory Accident Benefits arising out of motor vehicle accidents, which are governed by the *Insurance Act*, and its applicable Regulation, the *Statutory Accident Benefits Schedule – Effective September 1, 2010* ("**SABS**").

As you know, as of April 1, 2016, legislative amendments transferred jurisdiction to determine disputes between insurers and their insureds with respect to claims for Accident Benefits under the SABS was assigned to the Tribunal. Previously, such disputes were adjudicated either by the Courts, or by Arbitrators at the Financial Services Commission of Ontario. These amendments were informed by the Auto Insurance Dispute Resolution System Review led by the Honorable Mr. Justice Cunningham. As indicated in His Honour's 2014 Final Report (attached), it was vital to the transformation of the dispute resolution system that claims be handled in a timely manner and fully adjudicated within six months.

300-20 Toronto Street, Toronto, ON, Canada M5C 2B8

tel/tél: 416.869.1047 | toll free/sans frais: 1.800.668.8900 | fax/télé: 416.869.1390 | [info@oba.org](mailto:info@oba.org) | [www.oba.org](http://www.oba.org)

When the Tribunal assumed jurisdiction for the adjudication of Accident Benefits disputes, members of the insurance and personal injury bar were told, given the review led by the Justice Cunningham, that a significant reason for this change was to permit the timely determination of disputes involving Accident Benefits claims. Very broadly speaking, the dispute resolution process now involves the filing of an Application with the Tribunal, usually on behalf of a person claiming Accident Benefits as a result of a motor vehicle accident, which is then responded to by that insured person's insurer. The matter then proceeds to a "Case Conference", presided over by an Adjudicator with the Tribunal. Adjudicators are, of course, appointed by the Province. If a settlement cannot be achieved at the Case Conference, the presiding Adjudicator will consult with the parties and establish the steps leading up to a hearing before a separate Adjudicator who will decide the issues in dispute between the parties. That hearing may be in-person, or in writing, or it may be a "hybrid" proceeding.

Regrettably, members of the Section who practice before the Tribunal have noted, with growing concern, that the dispute-determination process has become plagued with delays. The parties often wait months before a Case Conference can take place, and once a Case Conference does occur, the parties can find themselves waiting additional months, or even more than a year, before a hearing will take place – even if the hearing is in writing. The parties must then often wait for weeks or even months before a decision is provided by the Adjudicator who presided at the hearing.

While some delay is inevitable, particularly with respect to complex disputes, or disputes involving multiple issues, our members are finding that even relatively simple disputes can take months, or even years, from when an Application is filed to when a decision is rendered.

This presents a significant problem in terms of access to justice, as well as not being reflective of the review by Justice Cunningham, that informed the amendments transferring jurisdiction to the Tribunal. Neither an insured person, nor his or her insurer, benefits from the months or years of uncertainty surrounding disputes involving Accident Benefits. Often, particularly for potentially serious claims involving whether or not an individual has suffered a "Catastrophic Impairment", as that term is defined and used in the SABS, neither the insured person nor his or her insurer knows whether that person can even claim further Benefits, if that person's "non-Catastrophic" Benefits have been exhausted.

In some respects, the Tribunal has already adapted to changing conditions, particularly those due to the ongoing COVID-19 pandemic. For example, the Tribunal will now hear almost all disputes that would have been heard in-person via videoconferencing. The parties are also able to file their documentation in respect of a dispute electronically with the Tribunal. These are positive developments and undoubtedly help with access to justice in many ways. However, they are, unfortunately, overshadowed by the significant degree of delay in the progress and determination of the disputes themselves.

From what our members have been told, a very significant reason, and indeed, perhaps the most significant reason, for this chronic delay is a shortage of Adjudicators who can conduct Case Conferences and preside over hearings. While we recognize that resources of all branches of Government, including your Ministry, are facing significant demands on limited resources, the lack of Adjudicators is only worsening an already over-burdened dispute resolution system, with

all of the costs and uncertainties that will arise as a result. Adjudicators are appointed by the Lieutenant Governor in Council and there is no limit to the number that may be appointed under the *Licence Appeal Tribunal Act, 1999*. Further, the Tribunal's costs regarding accident benefits adjudication are contributed to by assessments of insurers that issue motor vehicle liability policies. Accordingly, we do not see any particular economic reason why more adjudicators could not be hired, in order to ensure timely and effective dispute resolution.

As a Section, we are both mindful of, and appreciative of, the steps that you and your Ministry have taken to improve and modernize the legal system in Ontario. As noted above, a perfect example is the support provided to the Tribunal to assist in the improvement of its functioning through the use of technology. To support the ongoing work of your Ministry to ensure access to justice in a timely fashion for all Ontarians, and in line with the Justice Cunningham's original 2014 Report, that undoubtedly influenced the creation of the current system, we request that attention be given to appointing an increased number of Adjudicators so that the Tribunal can ensure timely hearings for those before them.

We would be happy to discuss any of the foregoing in greater detail and look forward to continuing to work with government to strengthen the LAT system.

Yours very truly,



Bronwyn Maria Martin  
Insurance Section Chair  
Ontario Bar Association