

VIA E-MAIL

February 4, 2016

Linda Lamoureux
Executive Chair
Safety, Licensing Appeals and Standards Tribunals Ontario
c/o Licence Appeal Tribunal
20 Dundas Street West, Suite 530
Toronto, ON
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Dear Ms. Lamoureux,

RE: Proposed Changes to the Rules of the Licence Appeal Tribunal

The Advocates' Society (the "Society") is a not-for-profit association of over 5,000 lawyers throughout Ontario and the rest of Canada. The mandate of the Society includes, amongst other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates. As courtroom advocates, the Society's members have a keen interest in the effective judicial resolution of legal disputes. A number of members of the Society practise in the area of personal injury and insurance law and represent clients in litigation involving the *Statutory Accident Benefits Schedule*.

The Society appreciates the efforts that are being made to consult with stakeholders on the proposed Rules of the Licence Appeal Tribunal (the "Tribunal"). In this regard, the Society struck a Task Force to examine the proposed Rules and provides the following comments.

- As a general comment, the Society accepts that while an expeditious hearing of disputes by the Tribunal is a laudable goal, the right to a full and fair hearing should not be compromised. For example, obtaining certain documentation (e.g. medical records) may reasonably require time additional to what is contemplated by the Rules, but these documents are often necessary components of a full hearing on the issues.
- The Society believes that the Rules should be more explicit with regard to the procedure by which an opposing party must be served with or notified of a claim, including corresponding timelines for the service and filing of a response. In a similar vein, the Rules should have better clarity as to when an application is perfected and the triggering event for the setting of a Case Conference.

- With regard to Rule 10.2, the Society believes that the language in this Rule should track the language in Rule 53 of the *Rules of Civil Procedure*. Reports provided by expert witnesses in the accident benefits context may be used in tort proceedings (for example, dealing with an individual's ability to work). As such, the language in the two sets of Rules should be identical. In addition, the difference between subparagraphs (d) and (f) of Rule 10.2 is not entirely clear, and these two subparagraphs appear to be duplicative. Finally, the Society believes that further clarity is required for subparagraph (e) of Rule 10.2. In particular, there would be practical challenges that would arise if counsel were to attempt to summarize areas where one party's expert differs from an opposing expert and emphasize areas of agreement between the experts.
- The Society understands the rationale of expeditious dispute resolution behind Rule 12.2 (providing that the Tribunal may direct that all or part of a hearing be in written format (rather than electronic or in-person) "unless a party satisfies the Tribunal that there is good reason not to") and Rule 12.3 (providing that the Tribunal may direct that all or part of a hearing be held in electronic format "unless a party satisfies the Tribunal that it is likely to cause the party significant prejudice"). However, the Society suggests that the Rules might expressly provide for the authority of the Tribunal to weigh the efficiency of a written or electronic hearing with the important value that an in-person hearing can bring to a proceeding in particular circumstances, and that the Tribunal should hear from counsel with regard to the format of a hearing. In addition, the Society believes that certain types of proceedings should be heard in-person as a matter of course. For example, disputes over income replacement benefits or catastrophic impairment often involve significant financial consequences if they address issues of either entitlement or quantum. With regard to entitlement, such cases may have significant repercussions on a companion tort proceeding.
- In this regard, the Society is encouraged by the idea that there would be Tribunal members who would adjudicate in-person hearings outside the Greater Toronto Area. The Society urges the Tribunal to ensure that geographical distance from Toronto not become a determinative factor in the choice of format for a hearing.
- Rule 16.1 provides that when an adjournment is requested, the requesting party must provide three alternative hearing dates that are within 30 days of the hearing date. This reflects a significant change from the current Rules, which provide that the alternative hearing dates must be within 90 days of the hearing date. The proposed new requirement may, in certain circumstances, be impossible to achieve even with the best efforts of counsel. Counsel (particularly sole practitioners or members of small firms) are likely to experience scheduling challenges. While recognizing that the goal of the proposed amendment is to achieve an expeditious resolution of the dispute, the Society suggests that the current 90-day requirement strikes a reasonable and appropriate balance. This is particularly true given that the Tribunal will set dates for Case Conferences over which counsel may have limited control.
- The Society feels that Rule 18, as currently drafted, is not sufficiently specific to address questions that may arise with regard to reconsideration. The Rules should be more express with regard to whether reconsideration of a decision by the Tribunal is mandatory or whether it is a voluntary option, with an appeal from an order of the Tribunal

to Divisional Court being another option. The Rules could also be more helpful in specifying the deadlines for an appeal to Divisional Court. In addition, subparagraph (c) of Rule 18.2 creates some confusion as the Tribunal is not bound by other decisions of the Tribunal or past decisions of the Financial Services Commission of Ontario.

- Rule 19 on costs appears to be limited to orders against a party who has acted unreasonably, frivolously, vexatiously or in bad faith. The Society believes that the Rules should be expanded to provide for the payment of costs by a party who is simply unsuccessful in the proceeding but does not engage in such behaviour.
- In the spirit of expeditious dispute resolution, the Society believes there should be a specific Rule which provides for consequences to a party who acts unreasonably in failing to make production in advance of a Case Conference. Such behaviour can require adjournments which lead to lengthier proceedings.
- The Society believes that the Rules should address court reporters and the creation of an official record for potential proceedings before Divisional Court. This includes the creation of a record of hearings conducted by telephone.

The Society is appreciative of the opportunity to make submissions on these proposed Rules. I would be pleased to discuss these items with you further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter K. Doody', with a long, sweeping tail extending to the right.

Peter K. Doody
Vice-President

Task Force Members:

Stephen Abraham
Brian Babcock
Edward Bergeron
Roger Chown
Judith Hull
Peter Kryworuk
Andrew Murray
Philippa Samworth
Richard Shaheen
Lucille Shaw