

## ANTICIPATED CHALLENGES RE: LAT'S DECISION MAKING PROCESS

By Michael Blinick

On June 20<sup>th</sup>, the Honourable Justice Thorburn, on behalf a 3 judge panel, released the reasons in the case of *Mary Shuttleworth v. License Appeal Tribunal*.

The subject action was commenced after an Arbitrator with the License Appeal Tribunal found that Ms. Shuttleworth did not suffer a catastrophic impairment as a result of a motor vehicle accident. Several months after the release of this decision, Ms. Shuttleworth came into information that suggested that the Arbitrator originally found her to have suffered a catastrophic impairment but that this finding was changed following a review by the executive chair of the governing body for the License Appeal Tribunal. Ms. Shuttleworth commenced this action as against the License Appeal Tribunal seeking to quash the Arbitrator's decision and to order a rehearing.

The Court reviewed the License Appeal Tribunal's review process to determine whether it was fair and sufficiently transparent to allow Arbitrators the ability to make whatever decisions they deem appropriate. While it was recognized that Arbitrators are allowed to engage in a consultation with colleagues that could result in them changing their minds, the Court held that the review process implemented at the License Appeal Tribunal was improper as it was imposed by the executive chair and was not specifically requested by the Arbitrator. This failure created a reasonable apprehension that there was a lack of independence of the Arbitrator, thereby creating a legitimate concern regarding the specific decision. As a result, a new hearing was ordered.

This decision will no doubt create significant trouble for parties who have and had cases before the License Appeal Tribunal, insurers particularly. With this decision, we expect that losing parties will now seek documentation associated with how the decision was made and this could then result in additional actions being taken to have these decisions set aside if there is any indication that the decision making process was improper. This will no doubt result in extra costs and challenges for insurers going forward on matters where they previously believed that they were finally dealt with.

Stay tuned for further updates....

A copy of the decision can be accessed here: <https://lnkd.in/gXwQUYy>