Yatar v TD Insurance Meloche Monnex: Supreme Court of Canada Confirms that a Limited Right of Appeal does not Preclude Simultaneous Judicial Review

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In a decision issued on March 15, 2024, ***Yatar v TD Insurance Meloche Monnex***, **2024 SCC 8** ("*Yatar*"), the Supreme Court of Canada unanimously confirmed that the existence of a limited statutory right of appeal does not, on its own, preclude judicial review for questions outside the scope of the statutory right of appeal.

In doing so, the Court settled some debate that had remained after its previous decision in ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65, regarding a litigant's ability to pursue both a statutory appeal and judicial review simultaneously. The Court cited and reaffirmed its earlier statement that "the existence of a circumscribed right of appeal in a statutory scheme does not on its own preclude applications for judicial review of decisions, or of aspects of decisions, to which the appeal mechanism does not apply".

Background

The appellant, Ms. Ummugulsum Yatar, was injured in a car accident in 2010. She contested her insurer's decision to deny accident benefits.

At the time of her accident, Ontario's legislation required statutory accident benefits disputes such as Ms. Yatar's to proceed through mandatory mediation. It also required an application to contest an insurer's refusal to pay benefits to be brought within two years of that refusal. This limitation period was extended for a period of 90 days after issuance of a mediator's report.

In March 2018, Ms. Yatar contested her denial before Ontario's License Appeal Tribunal ("LAT"). By then, the legislative scheme had been redesigned to grant the LAT exclusive first-instance jurisdiction over the resolution of statutory accident benefits disputes, to eliminate mandatory mediation, and, crucially, to provide for a limited appeal from a decision of the LAT on a question of law. The LAT dismissed her application as time-barred, and her request for reconsideration was dismissed.

Review by the Courts

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Ms. Yatar brought a statutory appeal on a question of law. She also sought judicial review to raise an issue of fact or mixed fact and law. Ontario's Divisional Court dismissed her appeal, holding that Ms. Yatar showed no errors of law. It also dismissed her application for judicial review on the basis that there were no exceptional circumstances that would justify judicial review.

The Ontario Court of Appeal accepted that a party can both exercise a statutory right of appeal and seek judicial review for questions outside the scope of the statutory right of appeal. However, it dismissed Ms. Yatar's appeal, holding that the availability of a limited statutory right of appeal and the "legislated intent to limit access to the courts" regarding disputes like Ms. Yatar's indicated that judicial review should only be allowed in "rare cases".

The Supreme Court of Canada disagreed. It clarified that, though granting relief on judicial review is discretionary, a court's discretion does not extend to declining to consider the application at all. At a minimum, the judge must determine whether judicial review is appropriate.

A judge is to consider the discretionary for refusing a remedy and, if one is present, they may decline to consider the merits of the application for judicial review. The judge may also refuse to grant a remedy. However, a person has a right to seek judicial review, even if a limited right of statutory appeal is available for some issues.

Unsettled Questions

The decision helpfully confirms that the existence of a statutory right of appeal does not signal that the legislature intended to preclude judicial review altogether. However, the Court declined to address whether a clearer indication of such legislative intent, such as a privative clause, could bar judicial review.

Yatar is consistent with the Manitoba Court of Appeal's approach in *Smith v The Appeal Commission*, 2023 MBCA 23, where the court held that a limited right of appeal on some questions does not foreclose any other claim of error (*Smith*, at para 4).

As noted in **our article on *Smith***, the bifurcation of proceedings could lead to procedural issues, where a judicial review is to proceed before the Court of King's Bench and the appeal before the Court of Appeal. This remains an issue after *Yatar*; though the Court acknowledged the legitimacy of concerns about judicial economy, it did not provide guidance on concurrent appeal and judicial review proceedings.

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