

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *A.A. v. Saskatchewan Government
Insurance, 2006 SKAIA 078*
Date: 20061128
File: 124 of 2005

BETWEEN

A.A., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
Lloyd Balicki, for the Applicant
Dale Brown, for the Respondent

Before: **Ann Phillips, Q.C., Chair**
Barbara Tomkins, Commission Member
Jane Lancaster, Q.C., Commission Member

**THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND
OTHER IDENTIFYING INFORMATION**

Heard at Regina, Saskatchewan
October 18, 2006

DECISION

[1] The Appellant, A.A., was injured in a motor vehicle accident on November 13, 2002. She suffered certain injuries and therefore applied for benefits under Part VIII of *The Automobile Accident Insurance Act*. Her claim was accepted by SGI.

[2] In the course of her treatment, the Appellant attended FIT for Active Living, a program where a treatment plan was developed, recommended and administered. While attending the program, the Appellant alleges she experienced symptoms that were unrelated to the symptoms and injuries for which she was being treated; she says that these were an additional harm.

[3] In the meantime, the Appellant continued to receive benefits from SGI pursuant to Part VIII of the *Act* until SGI provided a decision letter, dated January 13, 2005, indicating its view that the Appellant's injuries sustained in the accident were by then resolved. The Appellant appealed this decision to the Automobile Injury Appeal Commission by application dated March 18, 2005.

[4] By Statement of Claim dated March 7, 2005, the Appellant commenced action against the individual health care provider, the FIT health care facility, and SGI. In that action, the Appellant alleges that she suffered an additional injury while in treatment at FIT and she alleges this injury is the result of the negligence of each and all of the defendants.

[5] SGI applied for the Automobile Injury Appeal Commission's preliminary ruling on the question whether the appeal ought to be allowed to proceed while the Queen's Bench action was pending. SGI submitted that it should not and that the matter ought to be stayed or adjourned *sine die*, pending the resolution of the Appellant's Queen's Bench action.

[6] This preliminary hearing related only to the procedural issue raised. We did not hear any evidence on any of the substantive issues of the Appellant's appeal to this Commission or respecting her pending action in the Court of Queen's Bench. This decision, therefore, is confined to the preliminary matter.

LAW AND ANALYSIS

[7] Through counsel, SGI submitted that the appeal to this Commission (herein referred to as “the AIAC appeal) and the Queen’s Bench action (herein referred to as “the QB action”) raise the same or similar issues. He submits that it is not possible for this Commission to separate the FIT issues from the other issues in the matter and that our failure to make that distinction will lead to a proceeding that is unfair. In particular, he says, his case before AIAC might be compromised as counsel would have to weigh the benefits of testimony before the AIAC by individuals involved in the QB action against the potential harm that their testifying here might cause to their interests in the QB action.

[8] Counsel for the Appellant admits that there is cross-over among the issues. He agrees that facts and law will be raised at a hearing before the Commission that will also be raised before the Court of Queen’s Bench in that proceeding. But he says that any concerns this might raise (and he did not concede any) are negated by the recent decision of the Court of Queen’s Bench in *Yee v. Brousseau*.

[9] In that case, Ms. Yee filed a complaint with the Saskatchewan Human Rights Commission alleging that the defendant discriminated against her in the course of her employment. Shortly after filing this complaint, Ms. Yee also commenced action in the Court of Queen’s Bench for wrongful dismissal. Mr. Brousseau requested that the Human Rights complaint be held in abeyance pending the conclusion of the Queen’s Bench action.

[10] The Human Rights Commission sought Ms. Yee’s comments. Ms. Yee elected to proceed with the complaint before the Commission and hold the civil action in abeyance. The defendant, in response, took steps to force the prosecution of the civil action. In light of this, the Human Rights Commission concluded that it had no alternative but to hold Mr. Yee’s complaint in abeyance.

[11] In response, Ms. Yee took the unusual step of applying to the Court of Queen’s Bench to have her action there stayed pending the conclusion of the Human Right Commission proceeding.

[12] The court granted the stay. In so doing, the Court held that it was Ms. Yee's complaint and she was entitled to choose the process she wished to pursue.

[13] There is a significant distinction between the circumstances in the *Yee* decision and those before the Automobile Injury Appeal Commission. In *Yee*, the Human Rights Commission was subject to section 27.1(3) of *The Human Rights Code*, as follows:

(3) The Chief Commissioner may, at any time after a complaint is filed or initiated, defer further action if another proceeding, in the opinion of the Chief Commissioner, is more appropriate having regard to the nature of the allegations and the remedies available in the other proceedings.

[14] It is clear in the *Yee* decision that the Chief Commissioner had decided that it would not be appropriate to have two parallel proceedings pending at the same time. She required that Ms. Yee choose a forum and hold the other action in abeyance pending completion of the first. The actions of the defendant frustrated Ms. Yee's choice and the Chief Commissioner conceded the matter. By applying for a stay, Ms. Yee sought to retain her choice and the Court granted her that opportunity.

[15] This Commission, on the other hand, is not subject to any provision that parallels section 27.1(3) of *The Human Rights Code*. Instead, we are bound by section 191 of *The Automobile Accident Insurance Act*. It reads:

191(1). A claimant may appeal a decision of the insurer pursuant to this Part to either the Court of Queen's Bench or the appeal commission within [certain time frames].

(2) If a claimant appeals a decision of the insurer to:

- (a) the Court of Queen's Bench, no proceeding respecting the matter may be taken before the appeal commission;
- (b) the appeal commission, no action or proceeding respecting the matter may be taken before the Court of Queen's Bench.

[16] Counsel for both parties have conceded, and the Commission agrees, that the word "matter" in subparagraphs (a) and (b) is to be read as essentially synonymous with the word "decision" used in subsection (1). That is, the section prohibits concurrent proceedings respecting the decision under appeal. It is not so broad as to prohibit concurrent proceedings that relate to separate causes that arose in the chronology of the motor vehicle accident, the injuries caused and their consequences.

[17] Instead, counsel for SGI has argued that the practical implications of the concurrent and parallel proceedings now pending create difficulties in the defence of either action. We agree and might add that the concurrent and parallel proceedings now pending may also create difficulties for the Claimant, including the possibility that an unfavourable decision in the AIAC appeal might preclude or significantly affect the QB action.

[18] But we do not agree that these difficulties necessarily lead to a decision that the AIAC appeal must be stayed or deferred. The argument seems to presume that the resolution of the QB action ought, for practical and procedural reasons, to take priority over the AIAC appeal. If so, we do not accept the presumption.

[19] The AIAC appeal relates to a specific decision by SGI to discontinue benefits under Part VIII of *The Automobile Accident Insurance Act* effective January 13, 2005. As such, the Appellant has been without this support for almost two years at the time of writing. The appeal, if successful, might lead to the reinstatement of income replacement benefits and reimbursement for the costs of treatment and related expenses. These are benefits intended to compensate immediate and on-going losses and expenses that might be, for this purpose, equated to on-going special damages. It seems to us that a resolution of the Claimant's entitlement to benefits that reimburse immediate and on-going needs and promote her recovery from injuries may be of significantly higher priority than the resolution of her claim for general and special damages relating to only part of the chronology and that cannot, therefore, reimburse the losses and entitlement that she claims in the AIAC appeal.

[20] It is possible that the prosecution and defence of each action might have to make some choices as to the manner of presenting their cases in light of the other and the differences in the nature of the proceedings. However, this does not help in the determination of whether the AIAC appeal may proceed in advance of, or concurrently with, the QB action. We believe that choice lies with the Appellant, in accordance with the spirit of the *Act* and in accordance with *Yee v. Brousseau*.

[21] We further note that the Commission will not necessarily be required to reach conclusions respecting the Claimant's pending allegations of negligence in the course of hearing and deciding the AIAC appeal. She may allege that her injuries continue irrespective of the incident at FIT or that SGI's responsibility under Part VIII continues – interrupted or not – notwithstanding negligence by any or all of the defendants as alleged in the QB action. Or, the evidence and argument at the AIAC appeal may require this Commission to make findings relating to issues also relevant in the QB action. We do not think that this possibility precludes our proceeding with the appeal.

CONCLUSION

[22] The Commission is satisfied that the Appellant's AIAC appeal, by application signed March 18, 2005, may proceed. In so concluding, the Commission intentionally refrains from comment on the need to stay or defer prosecution of the QB action. That is a matter for resolution between the parties and, if appropriate, by the Court of Queen's Bench which, of course, has jurisdiction over its own process and proceedings before it. Our conclusion relates solely to the Appellant's entitlement to take the AIAC appeal forward at this time.

COSTS

The matter of costs will be reserved for consideration at the conclusion of the appeal proceedings.

Dated at Regina, Saskatchewan, on November 28, 2006.

Ann Phillips, Q.C., Chair

Jane Lancaster, Q.C., Commission Member

Barbara Tomkins, Commission Member