

COURT OF APPEAL FOR ONTARIO

BETWEEN:

UMMUGULSUM YATAR

Appellant

and

TD INSURANCE MELOCHE MONNEX and LICENCE APPEAL TRIBUNAL

Respondents

and

**INCOME SECURITY ADVOCACY CENTRE,
ADVOCACY CENTRE FOR TENANTS ONTARIO
and ATTORNEY GENERAL OF ONTARIO**

Interveners

**FACTUM OF THE INTERVENER,
INCOME SECURITY ADVOCACY CENTRE**

February 4, 2022

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PART I: OVERVIEW

1. This appeal is about restricting access to judicial review. This Court must decide whether a limited statutory right of appeal restricts the availability of judicial review for decisions that cannot be appealed. The Court's decision will set a precedent for review of decisions from a wide variety of administrative tribunals. In doing so, it will affect social assistance recipients, who are some of the poorest and most vulnerable persons in Ontario. This is because social assistance recipients have statutory rights to appeal some, but not all, of the decisions that determine their access to the resources they need to survive. They require access to judicial review to challenge unreasonable non-appealable decisions.

2. A limited statutory right of appeal does not reflect legislative intent to restrict access to judicial review to “exceptional circumstances”, if at all, especially in the context of remedial legislation. If adopted, the Divisional Court’s approach would result in negative impacts on social assistance recipients.

3. The Income Security Advocacy Centre ("ISAC") is a specialty legal clinic funded by Legal Aid Ontario to serve social assistance recipients across the province. ISAC intervenes in this appeal to provide submissions regarding the impact that this Court's decision could have in the context of social assistance law.

PART II: FACTS

4. Access to social assistance is governed by the *Ontario Works Act*¹ and the *Ontario Disability Support Program Act*.² This legislation permits social assistance applicants and recipients to appeal certain types of benefit decisions to the Social Benefits Tribunal (the “Tribunal”). As with appeals from the License Appeal Tribunal (the “LAT”), the legislation provides a statutory right of appeal from Tribunal decisions to the Divisional Court on questions of law.³

PART III: ISSUES AND LAW

5. ISAC makes two arguments:

- A. The Divisional Court's interpretation of the impact of a limited statutory right of appeal is novel and inconsistent with the object and purpose of remedial legislation determining vulnerable persons' access to necessary benefits.
- B. The Divisional Court's reasoning, if affirmed, will have a negative impact on social assistance recipients.

6. Accordingly, the Divisional Court's new restriction for accessing judicial review should not stand. In the alternative, should this Court decide to uphold it, then it should clarify that the restriction applies only to LAT decisions under the *Statutory Accident Benefits Schedule*⁴ (“SABS”), and is not broadly applicable to other statutory regimes like the social assistance regime.

¹ *Ontario Works Act*, 1997, [SO 1997, c 25, Sch A](#) [“**OWA**”].

² *Ontario Disability Support Program Act*, 1997, [SO 1997, c 25, Sch B](#) [“**ODSPA**”].

³ *OWA*, *supra* at [s 36\(1\)](#); *ODSPA*, *supra* at [s 31\(1\)](#).

⁴ *Statutory Accident Benefits Schedule*, [O Reg 34/10](#).

A. The limit on judicial review is novel and inconsistent with the legislature's intent

i. The Divisional Court's interpretation is novel

7. The Divisional Court held that judicial review of LAT decisions is "only available, if at all, in exceptional circumstances".⁵ It based this reasoning in large part on its interpretation that the limited right of appeal for LAT decisions reflects legislative intent that any review of those decisions be restricted to questions of law.⁶

8. The Court's reference to judicial review as being available only in exceptional circumstances "if at all" imposes a new restriction on access to judicial review. Courts have long declined to conduct judicial review for reasons relating to mootness,⁷ prematurity,⁸ adequate alternative remedy,⁹ and excessive delay.¹⁰ Courts have also exercised discretion to refuse remedies that would serve no useful purpose,¹¹ or that are not in keeping with the balance of convenience.¹² However, none of those well-established discretionary bars are engaged in the context of this appeal. The Court's

⁵ *Yatar v. TD Insurance Meloche Monnex*, 2021 ONSC 2507 (Div Ct) at para 46 ["**Yatar**"].

⁶ *Yatar*, *supra* at para 41.

⁷ *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342.

⁸ *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10.

⁹ *Strickland v. Canada (Attorney General)*, 2015 SCC 37.

¹⁰ *Ransom v. Ontario*, 2010 ONSC 3156.

¹¹ *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 SCR 202.

¹² *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2.

application of a limited statutory right of appeal to restrict judicial review of a non-appealable issue is novel.

9. The Court's reasoning is a striking departure from existing jurisprudence because it conflicts with the Supreme Court's affirmation in *Vavilov* that "a limited right of appeal, such as a right of appeal on questions of law or a right of appeal with leave of a court, does not preclude a court from considering other aspects of a decision in a judicial review proceeding".¹³ Since the release of *Vavilov*, some courts have applied that decision to reason that a limited right of appeal does not restrict judicial review of non-appealable issues.¹⁴

10. If left undisturbed, the Divisional Court's reasoning is likely to restrict judicial review beyond the LAT context. Already, the Divisional Court has applied the reasoning in the decision below to other statutory schemes that contain limited appeal rights. In *Peel Standard Condominium Corporation No. 779 v. Rahman*,¹⁵ it applied the decision below with respect to an application for judicial review of a decision by the Condominium Authority Tribunal (although that case did not involve non-appealable issues, so the statutory right of appeal was an adequate alternative remedy). In *Friends of Simcoe Forests Inc. v. Minister of Municipal Affairs and Housing*,¹⁶ it reasoned that judicial review

¹³ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 45 [**"Vavilov"**].

¹⁴ See for example: *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2021 FCA 161, per Gleason and Leblanc JJA at paras 110-123 (though note Near JA's disagreement with this reasoning) [**"Best Buy"**]; *Ewanek v. Winnipeg (City of) et al.*, 2020 MBQB 98 at paras 27-32.

¹⁵ *Peel Standard Condominium Corporation No. 779 v. Rahman*, 2021 ONSC 7113 (Div Ct).

¹⁶ *Friends of Simcoe Forests Inc. v. Minister of Municipal Affairs and Housing*, 2021 ONSC 3813 (Div Ct) at paras 73-74.

of Local Planning Appeal Tribunal decisions is only available in "exceptional circumstances" in the face of a limited right of appeal.

11. A wide application of this new restriction may have unintended consequences, including negative impacts for social assistance recipients, as explained further below. It may also risk watering down the courts' constitutional duty to ensure that administrative bodies have acted within the scope of their lawful authority.¹⁷ While this judicial duty cannot be ousted entirely, the Divisional Court's new restriction risks offending this rule. By requiring courts to first fit non-appealable decisions into a narrow "exceptional circumstances" category, the new limit leaves little room for Courts to exercise their oversight duties on such decisions.

ii. A limited right of appeal does not reflect legislative intent to restrict judicial review, especially in the context of remedial legislation

12. One of the factors that the Divisional Court relied on in restricting judicial review was its interpretation that a limited statutory right of appeal is a reflection of legislative intent to restrict judicial review of non-appealable decisions.¹⁸

13. The Divisional Court's analysis of legislative intent was narrow and incomplete. Although the Divisional Court referenced the need to consider the purposes and policies

¹⁷ *Vavilov*, *supra* at para 24; *Crevier v. Attorney General of Quebec*, 1981 CanLII 30 (SCC), [1981] 2 S.C.R. 220 at pp. 236-237. See also *Best Buy*, *supra* at para 118 for a discussion of this issue.

¹⁸ *Yatar*, *supra* at para 41.

underlying the statutory scheme at issue¹⁹, it largely failed to do so. Instead, the Court's analysis to determine legislative intent prioritized the statutory scheme under review, particularly the "extensive 2016 revisions to the SABS dispute system."²⁰

14. This interpretation is not in keeping with the modern approach to statutory interpretation, where "the words of a statute" must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the statute, its object, and the intention of the Legislature.²¹ The Supreme Court has affirmed that this requires attention to the "text, context, and purpose" of a provision.²²

15. Accordingly, a contextual and purposive approach is required for interpreting appeal-limiting provisions, with a view to furthering the purpose of the legislation. The statutory scheme and any amendments made to it are only one factor to be considered in that analysis.

16. With respect to the text of statutory appeal provisions, the Court should consider whether the appeal-limiting provisions contain additional text that restricts access to judicial review. Where it does not, an interpretation that the provisions reflect legislative intent to restrict judicial review in addition to appeal requires reading language into the text that is not there.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Rizzo and Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para 21; *Vavilov*, *supra* at para 117.

²² *Vavilov*, *supra* at paras 117-118.

17. With respect to the context of statutory appeal provisions, the legislature's presumed knowledge of the broader statutory context is relevant. As Sullivan and Driedger explain in the *Construction of Statutes*, 6th ed.:

§ 8.9 Presumed knowledge. The legislature is presumed to know all that is necessary to produce rational and effective legislation. This presumption is very far-reaching. It credits the legislature with the vast body of knowledge referred to as legislative facts and mastery of existing law, common law and the Civil Code of Québec as well as ordinary statute law, and the case law interpreting statutes. ...²³ [emphasis added]

18. There is also a presumption that different statutes be interpreted coherently and harmoniously. The legislature does not intend to contradict itself or create inconsistent schemes.²⁴ As a result, courts must interpret legislative provisions (such as appeal-limiting provisions) in the context of the statute book as a whole to avoid conflict with the provisions of other statutes.

19. Section 2(1) of the *Judicial Review Procedure Act* (“JRPA”) permits courts to conduct judicial review “despite any right of appeal.”²⁵ Where a provision is enacted after the JRPA, the Court should presume that the legislature had knowledge of s. 2(1) and that it intended judicial review to be available where a right of appeal is not provided.

20. Legislatures do not speak in vain. Section 2(1) of the JRPA does not simply state that judicial reviews are an available review mechanism, but that they are available *despite any right of appeal*. The provision's express preservation of access to judicial

²³ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada Inc., 2014) at 205, **ISAC Book of Authorities, Tab 5** [“BOA”] [“Sullivan”].

²⁴ Sullivan, *supra* at 324-325, **BOA Tab 5**.

²⁵ *Judicial Review Procedure Act*, [RSO 1990, c J1](#) at [s 2\(1\)](#).

review in the face of statutory appeal rights must be given meaningful effect. An interpretation that statutory appeal rights restrict judicial review to exceptional circumstances conflicts with section 2(1) of the *JRPA* and renders it of little effect. This is inconsistent with the principle that legislatures produce law that is both "rational and effective".

21. Statutory appeal provisions must also be interpreted in accordance with their purpose. The SABS and the statutory dispute regime at issue in this appeal, like social assistance legislation, are remedial in purpose.²⁶ The SABS is consumer protection legislation whose object is to reduce the economic dislocation and hardship of motor vehicle accident victims.²⁷ Accordingly, such legislation must be given a fair, large and liberal interpretation to ensure the attainment of its object.²⁸

22. Both the SABS and social assistance schemes deal with the administration of benefits that vulnerable persons require to live their lives with dignity. Interpretation of the statutory appeal provisions in these schemes must give effect to the remedial purposes of such legislation. This requires an interpretation that promotes, rather than inhibits, access to review mechanisms for benefit decisions that can have grave consequences for vulnerable parties.

²⁶ *Arts v. State Farm Insurance Company*, 2008 CanLII 25055 (ONSC) at para 16 [**"Arts"**]; *Walsh v. Ontario (Disability Support Program)*, 2012 ONCA 463 (CanLII) at para 47.

²⁷ *Arts*, *supra* at para 16.

²⁸ *Legislation Act, 2006*, SO 2006, c 21, Sched F, s 64.

23. In view of this, a statutory right of appeal should be interpreted as a signal of legislative intent to create a clear process for vulnerable persons to challenge decisions that seriously impact their lives. It is not a signal of legislative intent that unreasonable non-appealable decisions be insulated from any type of review.

B. Social assistance recipients will be negatively impacted by the Divisional Court's approach

24. Similar to the applicant in the decision under appeal, social assistance recipients have a statutory right to appeal Tribunal decisions on questions of law. However, there are numerous frontline caseworker decisions that significantly impact their quality of life, dignity and livelihood, and that cannot be appealed to the Tribunal. Judicial review is the only review mechanism available where one of these non-appealable decisions is unreasonable.

25. It is not clear whether the Divisional Court's new restriction would apply to this type of non-appealable decision. However, it is possible given the Court's reasoning that limited appeal rights reflect legislative intent to restrict access to judicial review.²⁹

26. To provide this Court with context regarding the types of decisions that may go unreviewed if the Divisional Court's new restriction is applied broadly, we address two examples of decisions that social assistance recipients cannot appeal. These are discretionary decisions and refusals of extension of time for internal review.

²⁹ *Yatar*, *supra* at para 41.

i. Discretionary benefit decisions

27. Social assistance recipients can apply for “discretionary benefits” to cover the cost of dental services, prosthetic devices (including eyeglasses), medical travel, dentures, the cost of funeral and burial and other items.³⁰ A social assistance recipient cannot appeal a decision refusing a discretionary benefit to the Tribunal. These decisions can only be judicially reviewed.³¹

28. The items or services that constitute "discretionary benefits" can cost thousands of dollars per year. Even when the costs are not high, these benefits can be inaccessible for persons living in deep poverty unless their caseworker grants their request for the discretionary benefit.

29. A decision refusing discretionary benefits can affect a disabled person’s mobility, access to necessary care, quality of life and dignity. These decisions can have severe lifelong consequences. For example, without access to judicial review:

- A disabled man would be left without recourse when his ODSP caseworker refuses his request for discretionary benefits to cover a meal supplement that his doctor recommended for his cardiac health³²;

³⁰ [O Reg 134/98 \(General\)](#) at s 59.

³¹ [OWA](#), *supra* at s 26(2) and under s 68 of [O Reg 134/98 \(General\)](#) and [ODSPA s 21\(2\)](#) and under s 57 of [O Reg 222/98 \(General\)](#).

³² [1807-04438 \(Re\)](#), [2019 ONSBT 783](#).

- An ODSP recipient who requires foot care due to chronic pain, deformities in her feet and toes, difficulty walking, Type 2 diabetes and peripheral sensory impairment, would be left without recourse if her worker refuses her request for discretionary benefits³³; and,
- A disabled woman who requires a mouth guard to alleviate migraine headaches and avoid surgery would be left without recourse if her ODSP worker refuses her request for discretionary benefits.³⁴

30. Social assistance recipients often have long-term, dependent and strained relationships with frontline decision-makers. They can feel “demeaned, dehumanized and disrespected in their interactions” with decision-makers.³⁵ After a discretionary benefit denial, recipients are often discouraged from making another request, even if the service or item is needed to improve their quality of life and is justified.

ii. Extension of time for internal review: extinguishing appeal rights

31. When OW and ODSP caseworkers deny, cancel, or suspend benefits or issue overpayment notices, social assistance recipients must request an internal review of that decision within 30 days.³⁶ Vulnerable individuals sometimes miss that deadline due to

³³ 1202-02422R (Re), [2013 ONSBT 4511](#).

³⁴ 0905-04493 (Re), 3 March 2010; Reynolds (Social Benefits Tribunal), **BOA Tab 1**.

³⁵ Janet Mosher & Pat Evans (2006), “[Welfare Policy: A Critical Site of Struggle for Women’s Safety](#)”, *Canadian Woman Studies*, 25(1) at p. 165, **BOA Tab 4**.

³⁶ [O Reg 134/98 \(General\)](#) at s 69 (1); and [O Reg 222/98 \(General\)](#) at s 58 (1).

various barriers including health issues, addiction, incarceration, precarious housing, poor literacy, fear, lack of understanding of the appeals process and language barriers.

32. The ODSP Director and OW Administrator have the authority to grant an extension of time for internal review.³⁷ If they refuse to extend the time, social assistance recipient's appeal rights are extinguished. The refusal to extend time cannot be appealed to the Tribunal. Judicial review is the only recourse available to vulnerable individuals who are refused an extension of time.³⁸

33. The Director's decision on whether to grant an extension of time for internal review can determine whether a person will receive the subsistence income they require to access food, shelter, clothing, and basic necessities. It can also determine whether a person can challenge a decision that alleges they owe thousands of dollars in a government overpayment debt. Overpayments occur quite frequently in the social assistance context, often for innocent reasons.³⁹ Sometimes, the Director supplies the recipient with very little information about alleged overpayment and calculation, making it impossible for a vulnerable person to determine its accuracy or respond.⁴⁰

³⁷ [O Reg 134/98 \(General\)](#) at s 69 (3); and [O Reg 222/98 \(General\)](#) at s 58 (3).

³⁸ *OWA*, *supra* at s 27(1), [O Reg 134/98 \(General\)](#) at s 68; and *ODSPA*, *supra* at s 22(1), [O Reg 222/98 \(General\)](#) at s 57. The Divisional Court and the Court of Appeal have held that the Social Benefits Tribunal has no jurisdiction to hear an appeal on its merits where internal review is requested late and the Director refused to grant an extension of time: *Désabrais v. Administrator*, 2011 ONSC 199 (Div Ct), **BOA Tab 2**; *Walsh v. Director*, 2012 ONCA 463.

³⁹ *Surdivall v. Ontario (Disability Support Program)*, 2014 ONCA 240 (CanLII), at para 35. See paras 39-40 for other examples.

⁴⁰ See for example 2011-07297 (Re), 2021 ONSBT 2550 (CanLII). The Director failed to provide any documents justifying the \$20,000 alleged overpayment and the cancellation of income benefits. The Director did not attend the hearing.

34. As a result, the Director's refusal to extend time for internal review can have a severe financial impact on the vulnerable person, and deepen their poverty.

35. Upholding the Divisional Court's new restriction on judicial review will prevent social assistance recipients from challenging decisions where the Director or Administrator has refused to extend time for internal review, regardless of whether that refusal is reasonable. For example, without access to judicial review:

- A disabled long-term recipient with serious mental health difficulties could lose his right to challenge the cancellation of his income benefits and an assessment of a \$24,266 overpayment after allegedly missing the internal review deadline for reasons relating to his disabilities⁴¹;
- A person who missed their internal review deadline due to cognitive impairment arising from a brain injury would be unable to challenge a decision removing their right to appeal a decision suspending their ODSP income support⁴²; and,
- A person who filed the wrong form for internal review due to being given the wrong form by his caseworker, would be left unable to challenge a decision to refuse him ODSP income support.⁴³

⁴¹ 1312-12902RR (Re), [2017 ONSBT 1687 \(CanLII\)](#).

⁴² 1507-06915 (Re), [2015 ONSBT 4514 \(CanLII\)](#).

⁴³ 1404-04414 (Re), [2014 ONSBT 5043 \(CanLII\)](#).

iii. Non-appealable social assistance decisions impact the lives and dignity of vulnerable people

36. Non-appealable decisions can profoundly impact the lives and dignity of some of Ontario's most impoverished and vulnerable. Yet, if the Divisional Court's new restriction is applied, these non-appealable decisions could be shielded from judicial scrutiny. A restriction of judicial review to exceptional circumstances, if it is available at all, would make front-line decision makers unaccountable for decisions that seriously impact some of Ontario's poorest and most vulnerable.

37. This new restriction is difficult to reconcile with *Vavilov*'s requirement that a reasonableness analysis includes the decision's impact on the vulnerable party.⁴⁴ The Court emphasized that "many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable."⁴⁵ Where a decision impacts a person's life, dignity, or livelihood, decision-makers have a "heightened responsibility" to show that they have considered the severe consequences of the decision and those decisions are justified.⁴⁶

38. Accordingly, caseworkers must turn their minds to the individual before them and their lived experience of deep poverty.⁴⁷ They must consider the harsh impact of the denial, suspension or cancellation of social assistance benefits on this individual's quality

⁴⁴ *Vavilov*, *supra* at paras 133-135.

⁴⁵ *Vavilov*, *supra* at para 135.

⁴⁶ *Ibid.*

⁴⁷ For a discussion, see the Honourable Justice Lorne Sossin, "[The Impact of *Vavilov*: Reasonableness and Vulnerability](#)" (2021), *Supreme Court Law Review* 100(2) at 271-277, **BOA Tab 3**.

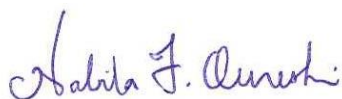
of life, dignity and livelihood, and justify their decision. Yet, this requirement to focus on impact and vulnerability will be meaningless for social assistance recipients, if the decisions that affect them are never actually reviewed by courts.

39. It may be tempting for this Court to conclude that decisions that have no right of appeal at all would constitute the kind of “exceptional circumstances” that merit judicial review, and that ISAC's concerns are therefore unjustified. However, this approach ignores the new set of systemic hoops that the poorest and most vulnerable would need to jump through, just to get through the door to have their judicial review heard. Most will not be able to do so. The legislature cannot have intended to add barriers for the poor to access benefits of last resort.

PART V: ORDER SOUGHT

40. ISAC takes no position on the outcome of this Appeal.

All of which is respectfully submitted on this 4th day of February, 2022.



Nabila F. Qureshi (70100Q)
Anu Bakshi (45587D)

SCHEDULE A – LIST OF AUTHORITIES

Jurisprudence

0905-04493 (Re), 3 March 2010; Reynolds (Social Benefits Tribunal)

1202-02422R (Re), [2013 ONSBT 4511](#)

1312-12902RR (Re), [2017 ONSBT 1687 \(CanLII\)](#)

1404-04414 (Re), [2014 ONSBT 5043 \(CanLII\)](#)

1507-06915 (Re), [2015 ONSBT 4514 \(CanLII\)](#)

1807-04438 (Re), [2019 ONSBT 783](#)

2011-07297 (Re), [2021 ONSBT 2550 \(CanLII\)](#)

Arts v. State Farm Insurance Company, [2008 CanLII 25055 \(ONSC\)](#)

Borowski v. Canada (Attorney General), [\[1989\] 1 SCR 342](#)

Canada (Attorney General) v. Best Buy Canada Ltd., [2021 FCA 161](#)

Canada (Minister of Citizenship and Immigration) v. Vavilov, [2019 SCC 65](#)

Crevier v. Attorney General of Quebec, [1981 CanLII 30 \(SCC\)](#), [1981] 2 S.C.R. 220

Désabrais v. Administrator, 2011 ONSC 199 (Div Ct)

Ewanek v. Winnipeg (City of) et al., [2020 MBQB 98](#)

Friends of Simcoe Forests Inc. v. Minister of Municipal Affairs and Housing, [2021 ONSC 3813 \(Div Ct\)](#)

Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission), [2012 SCC](#)

Homex Realty & Development Co v. Wyoming (Village), [1980] 2 SCR 1011, [1980 CanLII 55](#) (SCC)

MiningWatch Canada v. Canada (Fisheries and Oceans), [2010 SCC 2](#)

Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board, [1994 CanLII 114](#) (SCC), [1994] 1 SCR 202

Peel Standard Condominium Corporation No. 779 v. Rahman, [2021 ONSC 7113](#) (Div Ct).

Ransom v. Ontario, [2010 ONSC 3156](#)

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Surdivall v. Ontario (Disability Support Program), [2014 ONCA 240](#) (CanLII)

Walsh v. Ontario (Disability Support Program), [2012 ONCA 463](#) (CanLII)

Yatar v. TD Insurance Meloche Monnex, [2021 ONSC 2507](#) (CanLII)

Secondary Sources

The Honourable Justice Lorne Sossin, "[The Impact of Vavilov: Reasonableness and Vulnerability](#)" (2021), *Supreme Court Law Review* 100(2).

Janet Mosher & Pat Evans (2006), "[Welfare Policy: A Critical Site of Struggle for Women's Safety](#)", *Canadian Woman Studies*, 25(1).

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. Markham: LexisNexis Canada Inc., 2014.

SCHEDULE B – STATUTES RELIED UPON

Judicial Review Procedure Act, [R.S.O. 1990, c. J.1](#)

Applications for judicial review

2 (1) On an application by way of originating notice, which may be styled “Notice of Application for Judicial Review”, the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. R.S.O. 1990, c. J.1, s. 2 (1).

Legislation Act, 2006, [S.O. 2006, c. 21, Sched. F](#)

Rule of liberal interpretation

64 (1) An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects. 2006, c. 21, Sched. F, s. 64 (1).

Same

(2) Subsection (1) also applies to a regulation, in the context of the Act under which it is made and to the extent that the regulation is consistent with that Act. 2006, c. 21, Sched. F, s. 64 (2).

Ontario Disability Support Program Act, 1997, [SO 1997, c 25, Sch B](#)

Decisions that may be appealed

21 (1) Any decision of the Director affecting eligibility for or the amount of income support, assistance under section 49 or extended health benefits under section 49.1, other than a decision referred to in subsection (2), may be appealed to the Tribunal. 2006, c. 19, Sched. E, s. 2 (4); 2009, c. 33, Sched. 8, s. 4 (5).

Exceptions

21 (2) No appeal lies to the Tribunal with respect to the following matters:

1. A decision respecting discretionary income support.
2. A decision of the Lieutenant Governor in Council respecting income support in exceptional circumstances.
3. A decision to provide a portion of income support directly to a third party.
4. A variation, refusal or cancellation of income support caused by an amendment to this Act or the regulations.
5. A prescribed decision. 1997, c. 25, Sched. B, s. 21 (2).

Employment supports, no appeal

21 (3) No appeal lies to the Tribunal with respect to a decision taken under Part III of this Act. 1997, c. 25, Sched. B, s. 21 (3).

Internal review before appeal

22 (1) No appeal may be commenced unless an internal review has been requested. 1997, c. 25, Sched. B, s. 22 (1).

Same

22 (2) The request for internal review must be made within the prescribed time. 1997, c. 25, Sched. B, s. 22 (2).

Appeal to Tribunal

23 (1) An applicant or recipient may appeal a decision of the Director within the prescribed period after an internal review by filing a notice of appeal that shall include reasons for requesting the appeal. 1997, c. 25, Sched. B, s. 23 (1).

Appeal to Court

31 (1) Any party to a hearing before the Tribunal may appeal the Tribunal's decision to the Divisional Court on a question of law. 1997, c. 25, Sched. B, s. 31 (1).

O. Reg. 222/98 (General)

Decisions that Cannot be Appealed

57. For the purpose of paragraph 5 of subsection 21 (2) of the Act, the following are prescribed decisions:

1. A decision of the Director not to extend the time as set out in subsection 58 (3).
2. A decision to refuse, suspend or cancel income support or to reduce income support on the death of a member of the benefit unit.

3. A determination under subsection 16 (5) that an application is deemed to have been withdrawn.
 4. A decision under subsection 5 (1) to set a review date.
 5. Subject to paragraph 6, a decision of the Director that the effective date of an applicant's eligibility for income support is on or before the day on which the application is completed.
 6. If an applicant is a recipient of basic financial assistance under the [Ontario Works Act, 1997](#), a decision of the Director that the effective date of an applicant's eligibility for income support is on or before the first day of the month following the month in which the application is complete.
- 7-9. Revoked: O. Reg. 593/17, s. 17.

Request for Internal Review

58. (1) The prescribed time for requesting an internal review is 30 days from the day the decision is received or deemed to have been received under section 50 of the Act. O. Reg. 222/98, s. 58 (1); O. Reg. 48/09, s. 4.

58. (2) A request for an internal review shall be in writing. O. Reg. 222/98, s. 58 (2).

58. (3) The Director may hold an internal review even if it was not requested within the prescribed time if the Director is satisfied that the applicant or recipient was unable to request an internal review within that time because of circumstances beyond his or her control. O. Reg. 222/98, s. 58 (3)

Time and Manner of Conducting Internal Review

59. (1) The prescribed time for completing an internal review is 30 days from the day the Director receives the request for internal review. O. Reg. 222/98, s. 59 (1); O. Reg. 222/13, s. 10.

Ontario Works Act, 1997, [S.O. 1997, c. 25, Sched. A](#)

Decisions which may be appealed

26 (1) Any decision of an administrator affecting eligibility for or the amount of basic financial assistance, other than a decision referred to in subsection (2), may be appealed to the Tribunal.

Exceptions

26 (2) No appeal lies to the Tribunal with respect to the following matters:

1. A decision with respect to employment assistance that does not affect eligibility for or the amount of income assistance or a mandatory benefit.
2. A decision respecting discretionary benefits.
3. A decision of the Lieutenant Governor in Council respecting assistance in exceptional circumstances.
4. A decision to provide a portion of basic financial assistance directly to a third party.
5. A decision made under subsection 17 (2) to appoint a person to act on behalf of a recipient.
6. A variation, refusal or cancellation of assistance caused by an amendment to this Act or the regulations.
7. A decision respecting emergency assistance.
8. A prescribed decision. 1997, c. 25, Sched. A, s. 26.

Internal review before appeal

27(1) No appeal may be commenced unless an internal review has been requested.

Appeal to Tribunal

28(1) An applicant or recipient may appeal a decision of an administrator within the prescribed period after an internal review by filing a notice of appeal that shall include reasons for requesting the appeal. 1997, c. 25, Sched. A, s. 28 (1).

Appeal to Court

36 (1) The Director and any party to a hearing may appeal the Tribunal's decision to the Divisional Court on a question of law.

O Reg 134/98 (General)**Discretionary benefits**

59. (1) A delivery agent may pay or provide one or more of the benefits set out in subsection (2) to or on behalf of a person referred to in [section 8](#) of the [Act](#) in the amount determined by the administrator. O. Reg. 134/98, s. 59 (1).

(2) For the purposes of subsection (1), the benefits are the following:

1. The cost of dental services.
2. The cost of one or more prosthetic appliances, including eye-glasses.

3. The cost of vocational training and retraining.
4. The cost of travel and transportation.
5. The cost of moving.
6. The cost of a funeral and burial and the extraordinary costs of transporting a deceased person.
7. Any other special service, item or payment in addition to those set out in paragraphs 1 to 6 authorized by the Director. O. Reg. 134/98, s. 59 (2).

(3) An application for discretionary benefits shall be in the form and manner approved by the Director and shall be made to the administrator for the geographic area where the applicant resides. O. Reg. 134/98, s. 59 (3).

(4) Beneficiaries under the *Family Benefits Act* and children on whose behalf financial assistance is provided under [section 49](#) of the *Ontario Disability Support Program Act, 1997* are prescribed classes for the purpose of [clause 8](#) (c) of the *Ontario Works Act, 1997*. O. Reg. 227/98, s. 33.

(4.1) Children on behalf of whom temporary care assistance is provided are a prescribed class of persons for the purpose of [clause 8](#) (c) of the *Act*. O. Reg. 261/06, s. 10.

(5) Ontario or a delivery agent is entitled to recover amounts paid under paragraph 6 of subsection (2) from the persons or organizations liable for the payment of those costs. O. Reg. 134/98, s. 59 (5).

Decisions that cannot be appealed

68. For the purpose of paragraph 8 of subsection 26 (2) of the Act, the following are prescribed decisions:

1. A decision of the administrator not to extend the time as set out in subsection 69 (3).
2. A decision to refuse, suspend or cancel basic financial assistance or to reduce basic financial assistance on the death of a member of the benefit unit. O. Reg. 227/98, s. 37.

Request for Internal Review

69. (1) The prescribed time for requesting an internal review is 30 days from the day the decision is received or deemed to have been received under section 68 of the Act. O. Reg. 227/98, s. 37; O. Reg. 49/09, s. 4.

69. (2) A request for an internal review shall be in writing. O. Reg. 227/98, s. 37.

69. (3) The administrator may hold an internal review even if it was not requested within the prescribed time if the administrator is satisfied that the applicant or recipient was unable to request an internal review within that time because of circumstances beyond his or her control. O. Reg. 227/98, s. 37.

UMMUGULSUM YATAR

Appellant (Applicant)

- and -

**TD INSURANCE MELOCHE MONNEX and
LICENCE APPEAL TRIBUNAL
Respondents (Respondents)**

Court File No. C69874

COURT OF APPEAL FOR ONTARIO

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