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SUPREME COURT OF CANADA

Yatar v. TD Insurance Meloche Monnex, 2024

SCC 8

Administrative Law - Judicial Review v. Statutory Appeal

Application

Ummugulsum Yatar (“Ms. Yatar”) contested the denial of her insurance benefits, following an accident in 2010. After having her application dismissed by the Licence Appeal Tribunal (“LAT”) in 2019, due to the matter being time-barred, Ms. Yatar requested reconsideration of this decision, which was dismissed. Then, she simultaneously appealed the reconsideration decision before the Divisional Court of Ontario (“Divisional Court”) and applied for judicial review. The *Licence Appeal Tribunal Act, 1999* (“LATA”), provided that an appeal from a decision of the LAT relating to a matter under the *Insurance Act* (“IA”), may be made on a question of law only. The Divisional Court concluded that there were “no exceptional circumstances” in this case that would justify judicial review and declined to grant the application for judicial review.

While the Court of Appeal for Ontario (“Court of Appeal”) concluded that judicial review of the LAT adjudicator’s decision ought not to have been considered, it held that the application for judicial review would have been denied as the LAT adjudicator’s decision on the reconsideration was reasonable.

Decision

The Divisional Court erred when it concluded that only in “exceptional circumstances” would judicial review be available where there is a limited right of appeal. The Court of Appeal erred when it held that judicial review would be exercised only in “rare cases” and that, in this case, Ms. Yatar had an appropriate alternative remedy.

According to *Canada (Minister of Citizenship and Immigration) v. Vavilov* (“Vavilov”), a right of appeal does not preclude an individual from seeking judicial review for questions not dealt with in the appeal. Despite the statutory right of appeal limited to questions of law, judicial review is available for questions of fact or mixed fact and law as a matter of discretion regarding whether to undertake judicial review, having regard to the framework for analysis set out in *Strickland v. Canada (Attorney General)* (“Strickland”).

The appeal was allowed, and the matter was referred to the LAT adjudicator for reconsideration.

Pertinent Issues

The main issue in this appeal was related to the decision by the Divisional Court and the Court of Appeal not to undertake judicial review. As this is a discretionary decision, deference is to be shown. However, the exercise of discretion can be set aside when a judge considered irrelevant factors, failed to consider relevant factors or reached an unreasonable conclusion. While there is a right to



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seek judicial review, it is open to the judge before whom judicial review is sought to decide whether to exercise his or her discretion to grant relief.

When an applicant brings an application for judicial review, a judge must consider the application and, at a minimum, the judge must determine whether judicial review is appropriate. If, in considering the application, the judge determines that one of the discretionary bases for refusing a remedy is present, he or she may decline to consider the merits of the judicial review application. The judge also has the discretion to refuse to grant a remedy, even if he or she finds the decision under review unreasonable.

The exercise of discretion requires the court to determine the appropriateness of judicial review. The court should consider the available alternative and the suitability and appropriateness of judicial review in the circumstances. The question is whether some other remedy is adequate and whether judicial review is appropriate. This balancing exercise should consider the purposes and policy

considerations underpinning the legislative scheme in issue.

Both the Divisional Court and the Court of Appeal sought to apply Strickland but erred in principle by relying on a statutory right of appeal for questions of law as indicative of legislative intent to restrict access to judicial review for questions of fact and mixed fact and law. No such inference was warranted. Properly applying Strickland, the Divisional Court should have exercised its discretion to undertake judicial review for issues not dealt with under the statutory right of appeal.

Once it is determined that it is appropriate to undertake judicial review, the issue is whether the LAT adjudicator's reconsideration decision is reasonable. The LAT adjudicator's reconsideration decision was unreasonable, as he failed to consider the effects of the reinstatement of benefits on the limitation period and did not have regard to jurisprudence relevant to the matter.