



Citation: *Sellars v. New Brunswick (Superintendent of Insurance)*, 2018 NBFCST 8

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *INSURANCE ACT*, R.S.N.B. c I-12

Date : 2018-12-05
Docket : INS-001-2018

BETWEEN :

James Edward Sellars,

Appellant,

-and-

Superintendent of Insurance,

Respondent.

ORDER

WHEREAS:

1. At the November 26, 2018 Case conference relating to this matter, counsel for the Superintendent of Insurance indicated that the Superintendent of Insurance intended to testify at the hearing of the appeal, also intended to call another witness to testify at the hearing of the appeal and would possibly be introducing additional evidence at the hearing of the appeal;
2. On November 29, 2018, the Tribunal served the parties with a *Notice of Hearing of Motion* in relation to a motion raised by the Tribunal;
3. The issue raised by the Tribunal in the *Notice of Hearing of Motion* is a purely legal issue,

namely the scope of the participation of the Superintendent of Insurance on an appeal of her decision;

4. The *Notice of Hearing of Motion* provided the parties until December 13, 2018 to respond to the motion by filing *Statements of Position*;
5. At the November 26, 2018 Case conference, the Tribunal Chair set January 8 and 9, 2019 as the dates for the hearing of the merits of the appeal;
6. On December 5, 2018, the Superintendent of Insurance requested an extension of the deadline for filing her *Statement of Position* in relation to the motion for the following reasons:
 - The Tribunal has not provided the specific order it is intent on making,
 - The Tribunal has not indicated the reasons the motion is brought,
 - The Tribunal has not provided the facts or evidence upon which it intends to rely in support of the sought order,
 - The Superintendent of Insurance is unable to know the case it has to meet in relation to the motion without obtaining the reasons, facts and evidence the Tribunal intends to rely on in making an order on the motion,
7. Also on December 5, 2018, the Superintendent of Insurance requested the adjournment of the January 8 and 9, 2019 hearing dates;
8. When the Tribunal raises a motion it does not provide evidence, reasons for the motion, and the specific order sought as would be done with a motion filed by a party. The Tribunal is not a party. The Tribunal in raising a motion is identifying a legal issue necessitating the legal arguments from the parties;
9. The motion was raised to ensure the January 8-9, 2019 hearing proceeds smoothly;
10. Mr. Sellers objects to the Superintendent's requests unless he can be granted a licence without terms and conditions pending the delay caused by rescheduling the hearing of the appeal; and
11. Time is of the essence in this appeal as the *Notice of Appeal* filed by Mr. Sellars alleges that he is unable to work as a result of the terms and conditions placed on his licence by the Superintendent of Insurance and which are the subject of this appeal.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Superintendent of Insurance's request for an extension of time to file her *Statement of Position* is denied;
2. The Superintendent of Insurance's request for an adjournment of the January 8 and 9, 2019 hearing dates is also denied.

DATED at the City of Saint John this 12th day of December, 2018.

Judith Keating, Q.C.

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Tribunal Chair