



---

Citation: *Sellars v. New Brunswick (Superintendent of Insurance)*, 2019 NBFCST 3

PROVINCE OF NEW BRUNSWICK  
FINANCIAL AND CONSUMER SERVICES TRIBUNAL  
IN THE MATTER OF THE *INSURANCE ACT*, R.S.N.B. 1973, c I-12

Date: 2019-01-23  
Docket: INS-001-2018

BETWEEN:

**James Edward Sellars,**

-and-

**Superintendent of Insurance,**

Appellant,

Respondent.

**DECISION**

PANEL: Judith Keating, Q.C., Chair of the Tribunal  
Raoul Boudreau, Vice-Chair of the Tribunal  
Mélanie McGrath, Member of the Tribunal

DATE OF HEARING: Hearing in writing

WRITTEN REASONS: January 23, 2019

## **I. DECISION**

1. The Financial and Consumer Services Tribunal [the Tribunal] does not have the jurisdiction under the *Insurance Act*, R.S.N.B. 1973, c I-12 [*Insurance Act*] to hear Mr. Sellars' appeal.

## **II. OVERVIEW**

2. This proceeding involves an appeal by Mr. Sellars of the Superintendent of Insurance's decision of January 23, 2018 granting him a life, accident and sickness agent licence subject to certain terms and conditions.
3. On January 16, 2019, the Superintendent of Insurance filed a motion challenging the Tribunal's jurisdiction to hear the appeal in this proceeding.
4. On January 21, 2019, the Tribunal advised the parties that it was separating the Superintendent's motion into two parts: (1) jurisdiction of the Tribunal to hear the appeal; and (2) the type of appeal that should be conducted under the *Insurance Act*. The Tribunal also advised that it would deal with the issue of jurisdiction first by way of a hearing in writing.

## **III. ISSUE**

5. The issue raised by this motion is whether the Tribunal has jurisdiction pursuant to the *Insurance Act* to hear an appeal of a decision of the Superintendent of Insurance to renew a life, accident and sickness agent licence subject to terms and conditions.

## **IV. ANALYSIS**

### ***Positions of the Parties***

6. The Superintendent submits that in order for the Tribunal to have jurisdiction to hear an appeal, a right to appeal must be expressly granted by legislation. According to the Superintendent, the *Insurance Act* does not provide for an appeal of a Superintendent's decision renewing a licence with terms and conditions and, as a result, the Tribunal does not have jurisdiction.
7. Mr. Sellars submits that the Superintendent's attempt to deny an appeal on the merits before the Tribunal confirms the very administrative abuse that he alleges. Mr. Sellars argues that the Superintendent has been unfair and deceitful in arguing her terms and conditions are innocent and normal in the insurance industry, and have no effect on his ability to obtain a sponsor.

### ***Relevant Statutory Provisions***

8. Below are the relevant provisions of the *Insurance Act* providing a right to appeal a licensing decision.

9. Section 12 of the *Insurance Act*, as it existed on January 23, 2018, the date of the Superintendent's decision, provided a right to any applicant to appeal to the Tribunal from the refusal of the Superintendent to grant the licence. Section 12 read as follows :

**Duties respecting licences**

*12 An applicant for a licence may appeal to the Tribunal a decision of the Superintendent to refuse to issue a licence.*

10. Section 352 of the *Insurance Act* deals specifically with the issuance of licences by the Superintendent to agents, brokers, adjusters and damage appraisers. The relevant provisions are as follows :

**Agents, brokers, adjusters and damage appraisers**

*352(1)The Superintendent may issue to a person who has complied with the requirements of this Act and the regulations a licence authorizing such person to carry on the business of an insurance agent for life insurance, life and accident insurance, or life and accident and sickness insurance, subject to the provisions of this Act and the regulations and to the terms and conditions of the licence.*

*352(2)The Superintendent may issue to a person who is a resident of the Province and who has complied with the requirements of this Act and the regulations a licence authorizing such person to carry on the business of an insurance agent or an insurance broker for any class of insurance other than life insurance, subject to the provisions of this Act and the regulations and to the terms and conditions of the licence.*

*[...]*

*352(8)A licence issued under this section may be revoked or suspended by the Superintendent if, after due investigation and a hearing, he or she determines that the holder of the licence,*

- (a) has violated any provision of this Act by any act or thing done in respect of insurance for which such licence is required,*
- (b) has made a material mis-statement in the application for such licence,*
- (c) has been guilty of a fraudulent practice,*
- (d) has demonstrated his incompetency or untrustworthiness to transact the*

*insurance business for which such licence has been granted, by reason of anything done or omitted in or about such business under the authority of such licence, or*

*(e) has employed upon salary or otherwise any person whose application for licence as an insurance agent or an insurance broker has been refused or whose licence has been revoked or suspended under this Part without having first obtained the written approval of the Superintendent.*

*352(9) In determining whether to revoke or suspend a licence, the Superintendent may, and shall when requested in writing by the licensee, nominate an advisory board before which the hearing provided for in subsection (8) shall be heard, and the advisory board shall provide the Superintendent with the recommendations it considers appropriate.*

*352(9.01) In a case where no advisory board is nominated under subsection (9), the decision of the Superintendent made under subsection (8) after he or she has held a hearing may be appealed to the Tribunal.*

### **Analysis**

11. For the reasons that follow, we conclude that the Tribunal does not have the jurisdiction, in the circumstances of this particular matter, to hear an appeal of the decision of the Superintendent of Insurance to impose terms and conditions on Mr. Sellars' life, accident and sickness agent licence.
12. As clearly stated in *Kourtessis v. M.N.R.*, [1993] 2 S.C.R. 53, "appeals are solely creatures of statute". There is no inherent right to appeal a decision. For a right to appeal to exist, it must be given by explicit legislative authority.
13. The *Insurance Act* grants the authority to appeal in three distinct situations:
  1. on the Superintendent's refusal to grant a licence;
  2. on the Superintendent's revocation of a licence; and
  3. on the Superintendent's suspension of a licence.
14. Section 12, as it applies, clearly defines the appeal on the single ground of the refusal by the Superintendent to issue a licence.
15. As for subsection 352(9.01) of the *Insurance Act*, the right to appeal is explicitly predicated on either of the revocation or the suspension of a licence by the Superintendent under subsection 352(8) of the *Act*.

16. These provisions are silent on an appeal of a decision to impose terms and conditions.
17. We note that other financial and consumer services legislation, such as the *Direct Sellers Act*, S.N.B. 2011, c. 141, the *Pre-arranged Funeral Services Act*, S.N.B. 2012, c. 109 and the *Cost of Credit Disclosure and Payday Loans Act*, S.N.B. 2002, c. 28.3 explicitly provide for an appeal of the imposition of terms and conditions on a licence. As discussed, there is no such provision in the *Insurance Act*.
18. Other statutes, such as the *Mortgage Brokers Act*, S.N.B. 2014, c. 41 and the *Auctioneers Licence Act*, S.N.B. 2011, c. 117 provide a very broad and general right to appeal “a decision” to the Tribunal, which includes the imposition of terms and conditions. The *Insurance Act* does not contain a similar right to appeal.
19. Purely as obiter, and in light of the present circumstances and the increasing number of self-represented litigants, it would be advisable for the Superintendent to inform parties of their right to judicial review before the Court of Queen’s Bench upon the imposition of terms and conditions on a licence.

## V. CONCLUSION

20. The Tribunal does not have jurisdiction to hear the appeal in this matter and the appeal is dismissed.

**DATED** this 23<sup>rd</sup> day of January, 2019.

*Judith Keating*

---

Judith Keating, Q.C. Tribunal Chair

*Raoul Boudreau*

---

Raoul Boudreau, Vice-Chair of the Tribunal

*Mélanie McGrath*

---

Mélanie McGrath, Tribunal Member