Citation: Hou v. Aviva General Insurance Company, 2026 ONLAT 25-000946/AABS

Licence Appeal Tribunal File Number: 25-000946/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, (the "*Act*") in relation to statutory accident benefits.

Between:

Runbing Hou

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR:	**Michael Beauchesne**
APPEARANCES:	
For the Applicant:	Runbing Hou, Applicant Aylina Dhanji, Counsel
For the Respondent:	Han Nguyen, Adjuster Yamini Kundu, Counsel
Interpreter (Cantonese language):	Virginia Zhang
HEARD: by Videoconference:	**November 18-19, 2025**

OVERVIEW

[1] Runbing Hou (the "applicant") was involved in an automobile accident on August 15, 2023, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"). The applicant was denied benefits by Aviva General Insurance Company (the "respondent") and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] At the outset of the hearing, the applicant indicated he was withdrawing issues three and four as listed in the case conference report and order ("CCRO") for this matter, released to the parties on May 26, 2025. As such, the remaining issues in dispute are:

(a) Is the applicant entitled to an income replacement benefit ("IRB") in the amount of $84.48 per week from August 22, 2023, to date and ongoing?

(b) Is the applicant entitled to $252.00 ($1,300.00 less $1,047.90 approved) for physiotherapy services, proposed by Total Recovery Rehab Centre in a treatment plan ("OCF-18") dated October 5, 2023?

(c) Is the respondent liable to pay an award under section 10 of Regulation 664 because it unreasonably withheld or delayed payments to the applicant?

(d) Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] The applicant is entitled to a weekly IRB payment of $45.62 up to 104 weeks after the accident, starting on November 23, 2023. The applicant is also entitled to a weekly IRB payment of $185.00 beginning 104 weeks post-accident and ongoing. Interest is payable in accordance with section 51 of the *Schedule.*

[4] The applicant is entitled to $149.63 plus interest owing on the disputed OCF-18. The respondent is liable to pay an award in the amount of 25 per cent of the total IRB payable.

PROCEDURAL ISSUES

I consented to adjusting the disputed IRB quantum as requested by the applicant.

[5] At the outset of the hearing, the applicant requested that the weekly quantum for the disputed IRB be increased to $84.48 from $45.62 as indicated in the CCRO. The applicant explained that a calculation error had been discovered the day before the hearing as materials were being reviewed.

[6] The respondent did not consent to this change and argued that it had not been advised prior to the hearing that the weekly quantum had essentially doubled, nor provided any explanation. The applicant responded by saying that he was content to rely on the evidence submitted up to the hearing to support the revised quantum, so the respondent should not be disadvantaged as no new evidence was being introduced.

[7] I consented to revising the disputed quantum to $84.48. Given that the applicant was relying only on the evidence in the document brief it had earlier filed and exchanged in accordance with the CCRO, I was persuaded that no prejudice to the respondent would arise from arguing a weekly quantum of $84.48 versus $45.62. I also considered that the applicant bears the onus to prove the revised quantum, and that reasonable preparation time could be made available during the hearing to the respondent if needed.

The respondent may rely on Tab 16 of its document brief.

[8] During the hearing, the respondent discovered it had not filed Tab 16 of its hearing brief, which is a section 33 request notice dated October 8, 2025, that includes an IRB calculation by an accountant employed by the respondent. The respondent requested it be allowed to rely on this evidence because its inclusion in the document brief index shows it was inadvertently missed.

[9] The applicant did not consent to admitting Tab 16 to the proceeding. The applicant explained that it was exchanged on November 13, 2025—well outside the disclosure deadlines sent in the CCRO and too close to the hearing to have it independently reviewed by an accounting professional. The applicant also argued that the calculation did not qualify as a report per se, so it should not be admitted.

[10] In response, the respondent clarified that tab 16 had been shared twice—once with the appellant's counsel's law firm on October 8, 2025, and then directly with the applicant's counsel a month later in November 2025. The respondent also attributed the late production of this evidence to the applicant's disclosure of his 2023 and 2024 tax records on September 17, 2025. The applicant then countered that the September 2025 exchange of these documents was the second disclosure, with the first occurring three months earlier on June 20, 2025.

[11] Rule 9.3 of the *2023 Licence Appeal Tribunal Rules* (the "*Rules*") says if a party fails to comply with any Rule, direction, or order with respect to a document production, that party may not rely on that document without the consent of the Tribunal. When considering whether to provide consent, the Tribunal may consider any relevant factor, including:

(a) The reasons for non-compliance;

(b) Whether a party will be prejudiced by the admission or exclusion of the evidence and the extent to which that prejudice can be mitigated by any other order;

(c) The extent to which the substance of the information or testimony lies within the knowledge of the other party;

(d) Whether the other party opposes the admission of the evidence or testimony; and

(e) The relevance of the document, thing, or testimony to an issue in dispute in the proceeding.

[12] After considering these factors, I provided consent to the respondent to rely on tab 16 and admitted this evidence to the proceeding. The document consists of only eight pages and was exchanged as early as October 8, 2025. As such, I am satisfied the applicant had sufficient knowledge of this information and adequate opportunity to review it prior to the hearing. As well, the index to the respondent's brief does indeed include a tab 16 that fits the description of the notice letter and IRB calculation, so while the applicant opposes its admission, he ought to have known it would be relied upon. Taken together, I find these factors demonstrate little-to-no prejudice to the applicant arising from admitting this evidence. In my view, striking this evidence from the proceeding would be a disproportionate remedy to what amounts to simple inadvertence on the part of the respondent. And given that IRB quantum is disputed, I found the evidence was likely to be relevant.

ANALYSIS

What is the quantum and entitlement period for the applicant's IRB payments?

[13] I find the applicant has established his weekly IRB quantum for the first 104 weeks after the accident is $45.62, and that the period of entitlement begins on November 23, 2023.

[14] For context, the parties agreed at the outset of the hearing that the applicant is, in fact, entitled to an IRB for the entirety of the claim period up to the hearing. Given that the claim period extends beyond the first 104 weeks of disability, I take this to mean that the parties agree the applicant meets the IRB eligibility criteria set out at both sections 5(1)2 and 6(2)(b) of the *Schedule*. As the parties consented to narrow this issue to quantum only, I proceeded accordingly and did not consider the applicant's entitlement to an IRB under the *Schedule*.

[15] Section 7(2) of the *Schedule* provides for the amount of weekly IRB payable within the first 104 weeks of disability and thereafter. Section 7(2)1i says the calculation for the first 104 weeks is 70 per cent of the amount, if any, by which the sum of the applicant's gross weekly employment income and weekly income from self-employment exceeds the amount of his weekly loss from self-employment. Section 7(2)2 then requires that 70 per cent of the amount of the applicant's weekly loss from self-employment that he incurred as a result of the accident be added to this calculation.

[16] For the post 104-week period, section 7(2)1ii says the calculation is the greater of the amount determined for the first 104 weeks and $185.00.

[17] In turn, section 7(3) of the *Schedule* addresses deductions that the respondent can make to the IRB calculation at section 7(2), namely 70 per cent of any gross employment income resulting from employment and self-employment after the accident and during the period the applicant is eligible to receive an IRB. Section 7(1) also specifies that a weekly IRB benefit is less the total of all other income replacement assistance for the particular week the IRB is payable.

[18] The applicant submits he provided annual tax returns for 2022 and 2023 that show his gross business income owing to self-employment was $3,389.00 and $5,000.00, respectively. He asserts his weekly IRB is $84.48, calculated at 70 per cent of $6,275.37. He explains that the 2024 post-accident income he received from his rental property was "passive," (i.e., not arising from self-employment) because his girlfriend was undertaking all the management responsibilities for the property. He therefore reasons that this rental income

should not be deducted from his IRB quantum. The applicant also argues that the respondent's section 33 requests for more information pertaining to his income are irrelevant to his IRB claim because entitlement is not disputed, just quantum.

[19] The respondent argues that the applicant has not shown the quantum of his weekly IRB should be $84.48, and that $45.62 is the correct amount without taking deductions into account. The respondent explains that the last completed taxation year since the 2022 accident was 2023, and therefore reasons that the applicant's weekly IRB quantum would only be calculated on 70 per cent of $3,389.00. The respondent adds that the applicant did not show a financial analysis to support his claim of $84.48 over 52 weeks, nor did he produce evidence to establish that he was self- employed for 52 weeks prior to the accident.

[20] The respondent also asserts that the applicant's entitlement period is incorrect because he did not submit a certificate of disability ("OCF-3") until September 6, 2023. The respondent goes on to say the claim period is also affected by the applicant's failure to comply with multiple section 33 requests for more information that were issued between September 2023 and February 2024, as well as one made in October 2025.

What is the correct IRB quantum?

[21] I am persuaded that the calculation of IRB quantum provided by the applicant is incorrect because he conflates tax years and inconsistently applies the 70 per cent provision. To support a weekly IRB of $84.48, the applicant takes 70 per cent of his gross business income for tax year 2022 and then adds it to 100 per cent of his reported gross business income for 2023 before making yet another adjustment of 70 per cent on the total sum of $6,275.37.

[22] However, section 4(3) of the *Schedule* says the applicant's weekly self-employment income at the time of the accident is calculated from his income or loss from the business *for the last completed taxation year*. In this case, that would be the 2022 tax year because the 2023 tax year was not yet completed at the time of the accident in August 2023. The applicant reported a gross business income of $3,389.00 in the 2022 tax year and I find this is the gross income amount to be used for his IRB calculation. Given this amount, and in accordance with section 4(3) of the *Schedule*, the applicant's gross weekly income would be $65.17. When I apply the 70 per cent provision at section 7(2)1i of the *Schedule*, I find the applicant's weekly IRB quantum to be $45.62 before deductions.

[23] I did not consider the respondent's argument about whether the applicant established that he was self-employed for 52 weeks prior to the accident. This is because the contextual thrust of this position was to dispute the $84.48 weekly payment claimed by the appellant and not the $45.62 weekly payment which I find to be correct.

[24] I am persuaded the applicant has shown that the $55,975.00 in gross rental property income he claimed on his 2024 tax return is not IRB-deductible per section 7 of the *Schedule*. Section 4(3) of the *Schedule* sets out that income is determined in accordance with the *Income Tax Act (Canada)*. I find that section 4(1)(a) of the *Income Tax Act* clearly distinguishes rental income and business income as separate and distinct from one another:

> *"For the purposes of this Act, a taxpayer's income or loss for a taxation year from an office,* ***employment*** *[emphasis added],* ***business*** *[emphasis added],* ***property*** *[emphasis added] or other source, or from sources in a particular place, is the taxpayer's income or loss, as the case may be, computed in accordance with this Act …"*

[25] This distinction is also made out in the tax forms in evidence. The gross business income earned through the applicant's self-employment was claimed on line 13499 on both his 2022 and 2023 tax returns. In contrast, his 2024 rental income was claimed on line 12599 on his tax return. Section 249(1) of the *Income Tax Act* offers a definition of rental property that reads as follows:

> *"…rental property of a taxpayer means real or immovable property owned by the taxpayer, whether jointly with another person or otherwise, and used by the taxpayer in the taxation year … principally for the purpose of* ***gaining or producing gross revenue that is rent*** *[emphasis added] …"*

[26] Given that the only income claimed on the appellant's 2024 income tax form is rental income, which the *Income Tax Act* does not consider to be business income arising from self-employment (i.e., as claimed by the applicant in 2022 and 2023), I am satisfied that no deduction should be made because section 7 of the *Schedule* does not contemplate deducting rental income from the amount of IRB payable to an insured person.

[27] Taken in totality, I find this evidence establishes, on a balance of probabilities, that the applicant's weekly IRB quantum payable up to 104 weeks after the accident is $45.62. During the post 104-week period, the applicant's weekly IRB quantum payable is $185.00 in accordance with section 7(2)1ii of the *Schedule*.

What is the correct start date of the entitlement period?

[28] I am persuaded that the period in which an IRB is payable to the applicant starts on November 23, 2023.

[29] I agree that the applicant was precluded from receiving an IRB payment until at least September 6, 2023. Section 36(3) of the *Schedule* provides that the applicant is not entitled to a specified benefit, in this case an IRB, for any period before a completed OCF-3 is submitted. While the OCF-3 was completed by Mr. Ahmed Afifi on August 18, 2023, the first mention of it in the adjuster log notes is an entry made on September 8, 2023. Ms. Han Nguyen (adjuster) testified that the OCF-3 was received by the respondent a couple of days earlier on September 6, 2023. In his closing submissions, the applicant acknowledged the OCF-3 was submitted in September 2023. As such, I do not accept an IRB is payable starting on August 22, 2023, as indicated in the CCRO.

[30] Turning now to the section 33 requests made of the applicant by the respondent, I disagree with the applicant's position that these requests relate only to entitlement and therefore should bear no weight on the quantum dispute. In my view, an IRB would not be payable if the applicant had not complied with a reasonable section 33 request regardless of whether that request relates to substantive entitlement or quantum. Section 33(6) of the *Schedule* specifies that the respondent is not liable to pay a benefit in respect of any period during which the applicant fails to comply with a section 33 request.

[31] In any event, I find some of the information requested by the respondent was indeed required to calculate quantum. For example, the respondent's September 2023 request for information asked for 2022 tax records. As such, I have proceeded to consider each of the respondent's requests in turn to assess their bearing on the period the applicant is entitled to IRB payments.

[32] The respondent's submissions identify section 33 requests made on September 8, 2023, November 16, 2023, and February 9, 2024. I find the September 2023 request for an Employer's Confirmation Form ("OCF-2") and tax records pertaining to the 2022 tax year was reasonable. I was not directed to evidence that established any of this information had been provided at the time the request was made and I agree the 2022 tax records, in particular, were needed to calculate quantum.

[33] I am persuaded that these requests were satisfied by November 23, 2023. Ms. Nguyen testified that the OCF-2 was received on September 9, 2023. This is supported by a fax transmission report in evidence that confirms the OCF-2 was

sent to the respondent that same date. There is also a fax transmission report, dated November 20, 2023, that confirms the applicant's 2022 Notice of Assessment ("NOA") was provided to the respondent. As well, the applicant produced an e-mail dated November 23, 2023, that again provided his NOA in addition to his T1 General for 2022. While I was not pointed to a corroborating entry in the adjuster log notes that were produced, I accept these records were received because 2022 tax records were not requested at the case conference and the respondent confirmed in closing submissions that the T1 was received in November 2023.

[34] I would point out here that both the September and November 2023 section 33 requests also reference "documents detailing the revenues from self-employment for the last 52 weeks completed prior to the accident, commencing August 15, 2022 to August 15, 2023 and the post-accident period August 16, 2023 up to the present (i.e. bank statements, etc.)." The respondent maintained this request in its February 2024 notice.

[35] I find the applicant did not need to comply with the respondent's request for bank statements because it was not reasonable. As such, this request did not affect the start date of the applicant's IRB entitlement. The Tribunal declined to make a production order for essentially this same request. The corresponding CCRO to the case conference for this matter that proceeded on May 22, 2025, notes the following in response to the respondent's request for documents detailing the revenues from self-employment commencing August 15, 2022, up to the present including bank statements:

> *"Rule 9.2 provides that the Tribunal will not make an order for the production of any document or thing that is not relevant to the issues in dispute in the proceeding, or that is unduly repetitious. The respondent's request for bank records (and other identified documents) will contain* ***information that is not relevant*** *[emphasis added] to the issues in dispute in this application. To the extent that these documents contain some relevant information, that information is* ***unduly repetitious of the information contained in the tax records*** *[emphases added] that the applicant has agreed to produce."*

[36] I apply this principle to the respondent's section 33 requests for bank statements. The applicant had produced his 2022 tax records in November 2023—several months prior to the respondent's February 2024 section 33 request. As such, I find it was not reasonable for the respondent to maintain its request for additional financial information in February 2024 because the respondent had all the

information it needed to calculate the weekly base amount of the applicant's IRB quantum per section 7 of the *Schedule*.

[37] While the respondent argues it was unable to assess deductions to IRB quantum without further financial records, such as bank statements, I find there was little evidence to support the reasonableness of this request in September and November 2023. During the hearing, the respondent pointed to entries in clinical notes and records made by Dr. Lau in December 2023 and January 2024 that indicate the applicant's occupation as "snow plow." In my view, the respondent cannot rely on evidence that did not exist at the time it issued its section 33 notices to show they were reasonable in retrospect.

[38] Even if I did agree that Dr. Lau's evidence should be applied in the context of whether the respondent's section 33 request for additional financial information was reasonable—and therefore affected the IRB entitlement period—I would find this evidence weighs little on my decision. In my view, the annotations made by Dr. Lau fall short of establishing on a balance of probabilities that the appellant earned self-employment income after the accident. Again, the 2024 tax records produced by the applicant show no gross business income arising from self-employment income for that tax year—whether from snow plowing or otherwise. This supports the applicant's position that he was unable to work since August 2023 when the accident occurred, and is consistent with the OCF-3 in evidence.

[39] Indeed, the thrust of the respondent's section 33 request for more financial information was that a statement of business activities was not produced to support the $5,000.00 in gross business income that was claimed in 2023. However, the respondent did not direct me to where income would be broken out on a statement of business activities, such that any portion earned after the accident would be distinguishable. Using the statement of business activities filed with the appellant's 2022 tax return as a proxy, I am unable to make a determination of income earned during any increment of the stated fiscal period. It is simply an aggregate value for the entire tax year.

[40] As such, I did not further consider the applicant's compliance with this particular section 33 request insofar as bank records and "other identified documents" pertaining to self-employment (i.e., bank statements) is concerned.

[41] While I also assessed the September 2023 request for "details regarding any collateral benefits available to you or received by the you as a result of the accident" to be reasonable in accordance with section 47(1) of the *Schedule*, I find the respondent was satisfied that the applicant did not have such benefits at some point after issuing its second section 33 request on November 16, 2023,

and prior to February 9, 2024, when it issued its third section 33 request. While the respondent's February 2024 notice refers to "additional information" requested in September and November of 2023 that had not been provided, that notice does not specify that collateral benefits information remains an outstanding item. Further, the applicant testified he had no short or long-term disability benefits available to him, which I accept on a balance of probabilities given his self-employed status in concert with the amount of his reported gross earnings. I find the resolved status of the respondent's collateral benefits request is further supported by the CCRO for this matter because it does not mention any request for the applicant to produce collateral benefits information.

[42] Owing to the well-established principle that the *Schedule's* overriding mandate is to provide consumer protection, I resolve the ambiguity of when the respondent resolved its collateral benefits request in favour of the applicant. That is to say, I am satisfied the section 33 request pertaining to collateral benefits was resolved by the time the applicant provided his 2022 tax records in November 2023.

[43] The respondent also relied on a section 33 request made on October 9, 2025, to assist the respondent "with the determination of [IRB] quantum." For context, the respondent indicated this notice included an IRB calculation performed by an unidentified accountant employed by the respondent (i.e., an internally produced calculation). This accountant did not appear as a witness or provide an affidavit to corroborate the calculation, which diminishes the probative value of this evidence. The period this calculation covers is from August 23, 2023 to December 31, 2024. During the hearing, the respondent described this calculation as incomplete owing to alleged information gaps that include missing details of self-employment income from landscaping activities up to December 31, 2023; and missing details of collateral benefits arising from impairments occurring before the accident up to December 31, 2024.

[44] I reject the entire October 2025 section 33 request notice as unreasonable.

[45] The respondent indicates in this notice that it had received and assessed the applicant's 2023 tax records. As such, it knew the gross business income reported from the applicant's self-employment up to December 31, 2023. That income is $5,000.00, and whether it arises from landscaping or snowplowing performed in Richmond Hill or Markham as part of "Seasonview" or "HRB"—the two business names the applicant testified he used depending on which customers he was serving—matters little for the purpose of calculating an IRB quantum according to the requirements set out in the *Schedule*.

[46] Further, while the calculation report indicates an IRB quantum calculation cannot be performed because of incomplete collateral benefit information pertaining to earlier accidents in 2018 and 2022, the respondent did not make a section 33 request for this information in the October 2025 notice. For that matter, the adjuster log notes in evidence indicate the respondent was aware of these previous accidents as early as July 24, 2024. As such, it cannot be said that the applicant failed to comply with a section 33 request for information if that information was not requested.

[47] As well, the respondent's October 2025 notice requests various financial documents claiming that the applicant was earning ongoing "rental self-employment" income. But I was not directed to persuasive evidence of post-accident self-employment income; rather, I find the respondent continues to conflate rental income with self-employment income.

[48] In addition, much of the requested information is for the 2025 period, which falls outside the IRB quantum calculation as provided in its internal accountant's report and is therefore not required to calculate quantum for an IRB up to December 31, 2024. The respondent indicated in its notice that it had received and assessed the applicant's 2024 tax records. I was not pointed to any income reported in these tax records outside rental income. Therefore, I find the respondent already had the gross income information it needed to calculate an IRB quantum up to December 31, 2024.

[49] Taken in totality, I find this evidence establishes, on a balance of probabilities, that the applicant's weekly IRB quantum is payable onwards from November 23, 2023. Interest is payable accordingly per section 51 of the *Schedule*.

The applicant is partially entitled to the outstanding balance of the disputed OCF-18.

[50] I find the applicant has demonstrated he is entitled to the balance of the $200.00 form completion fee, which totals $149.63. The applicant has not established that the denied costs for a re-assessment are reasonable and necessary.

[51] To receive payment for an OCF-18 under sections 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree, and that the overall costs of achieving them are reasonable.

[52] The applicant submits that the denied portion of this treatment plan is owing to the Minor Injury Guideline ("MIG") limit. The applicant argues that the respondent failed to adjust this OCF-18 and approve the denied portion once he was removed from the MIG in 2024. To support entitlement to this OCF-18, the applicant relies on a Mackenzie Health hospital record dated August 21, 2023; a psychological pre-screening exam and subsequent assessment report completed by Dr. Sedigheh (psychologist) on March 18, 2024, and March 22, 2024, respectively; the August to November 2023 treatment schedule documented by Total Recovery Rehab Centre ("TRRC"); an entry in the clinical notes and records completed by Dr. Jonathan Lau on December 29, 2023; and the additional comments appended to an OCF-18 for chiropractic treatment certified by Dr. Georgia Palantzas (chiropractor) on November 11, 2023.

[53] The respondent argues that the denied portion of the disputed OCF-18 pertains to a reassessment fee that is not reasonable and necessary because it is inconsistent with Professional Services Guideline 03/14 on expenses related to professional services. The respondent also contends that the applicant's complaints of back pain were resolved by November 2023 at the latest (i.e., a month after the OCF-18 was submitted), and relies on the records of TRRC, Mackenzie Health, and Dr. Lau to support this position. The respondent adds that the applicant's complaints of headaches are not accident-related and attributed to poor sleep hygiene as documented by Dr. Lau on January 5, 2024.

[54] For context, this OCF-18 features multiple line items that include: (1) a reassessment in the amount of $102.47; (2) physiotherapy in the amount of $698.25; (3) active therapy in the amount of $299.28; and (4) a $200.00 fee for completing the OCF-18. According to the notice issued by the respondent on October 12, 2023, this OCF-18 was partially approved, meaning that the respondent agreed to pay the physiotherapy and active therapy, but did not agree to pay for the reassessment. The notice is silent on the status of the form completion fee.

[55] The notice indicates that the approved amount for the physiotherapy and active therapy treatments was $1,047.90. However, these two items do not balance to the approved amount. The cost of the physiotherapy and active therapy totals $997.53. The OCF-18 indicates tax is not applicable. So, I find there is a discrepancy of $50.37 that would appear to be an overpayment in favour of the applicant. Given that the MIG applied to this claim at the time, and that the $200.00 form completion fee was not addressed by the respondent, I conclude this fee was partially approved up to the MIG limit by the respondent. This means

the $252.00 disputed by the parties is comprised of the $102.47 for the re-assessment, and the balance of the form completion fee at $149.63.

[56] The respondent did not address this discrepancy during the hearing and the applicant did not support, with evidence, his claim that the respondent agreed to pay this fee. In my view, the balance of the OCF-18 fee is payable in accordance with section 25(1)3 of the *Schedule*, which specifies that the respondent shall pay reasonable fees charged by a health practitioner for reviewing and approving an OCF-18 under section 38 of the *Schedule* if any one or more of goods, services, assessments, or examinations described in the OCF-18 have been approved by the respondent.

[57] While I recognize the applicant was in the MIG at the time this OCF-18 was submitted in the autumn of 2023, and that section 38 deals with claims for medical benefits that are outside the MIG, I take notice that the respondent has a duty of good faith to continuously adjust the applicant's claim as circumstances change. I find the applicant was removed from the MIG by July 2024, which was substantiated when Ms. Nguyen testified that the MIG removal decision was owing to psychological impairments the applicant sustained as a result of the accident. I am therefore satisfied that the respondent, upon removing the applicant from the MIG, was required by section 25 of the *Schedule* to pay the balance of the form completion fee for this OCF-18. As such, I find the applicant is entitled to at least $149.63 of the disputed $252.00 on this OCF-18, plus applicable interest.

[58] I do not agree, however, that the remaining $102.47 for a re-assessment is reasonable and necessary. This is because the medical evidence after November 2023—when the applicant completed his last physical treatment session at TRRC—does not support the reasonableness and necessity of a re-assessment. The applicant's complaints of lower back pain to Dr. Sedigheh in March 2024 are not corroborated by Dr. Lau's entries of December 29, 2023, and January 5, 2024, which pertain to complaints of headaches and neck pain. In my view, the lack of back pain complaints to Dr. Lau in this period corroborates the applicant's description to Dr. Sedigheh of only "occasional" lower back pain symptoms that improved when he undertook progressive muscle relaxation techniques. I therefore accept that the applicant's accident-related back pain had resolved post-treatment to the extent that a re-assessment was not reasonable and necessary.

[59] For what it's worth, I placed little weight on the applicant's headaches as supporting the reasonableness and necessity of the re-assessment proposed in

this OCF-18. Part 6 of the OCF-18 does not list headaches as an accident-related injury. Further, Dr, Lau's records confirm that he assessed the applicant's headaches as owing to poor sleep hygiene.

[60] Taken in totality, I find this evidence does not support on a balance of probabilities, the applicant's entitlement to the $102.47 proposed for re-assessment in this OCF-18. The applicant is, however, entitled to the balance of the $200.00 form completion fee in the amount of $149.63 plus interest.

The respondent is liable to pay an award.

[61] I find the applicant has established that the respondent unreasonably withheld or delayed the payment of his IRB.

[62] The applicant seeks an award under section 10 of Regulation 664. Under section 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning "behaviour which is excessive, imprudent, stubborn, inflexible, unyielding or immoderate." [See, for e.g., *17-006757 v. Aviva Insurance Canada*, 2018 CanLII 81949 (ON LAT); and *S.M. v. Unica Insurance Inc*., 2020 CanLII 61460 (ON LAT Reconsideration]. The onus is on the applicant to prove, on a balance of probabilities, that the respondent's conduct meets this threshold.

[63] The applicant submits that the respondent has acted in bad faith by failing to properly adjust his claim since August 2023. He says, for example, that an IE to determine IRB eligibility was never requested despite the log notes showing the respondent was aware he was self-employed, had not worked since the accident, and was concerned about IRB exposure. The applicant also raises the respondent's acknowledgement of his entitlement to an IRB on the day of the hearing without any explanation and despite no substantive change in the file since productions were exchanged in June of 2025 in accordance with the CCRO. The appellant adds that the respondent neglected to hire an external accountant for the purposes of calculating the IRB quantum, instead relying on an anonymous internal effort at the last minute and a series of unreasonable section 33 requests to withhold IRB payments.

[64] The respondent submits that the reason for non-payment of the applicant's IRB is the applicant's failure to provide information that assisted with calculating quantum, and deductions in particular. The respondent also asserts that the applicant provided discrepant information about his business activities that

essentially frustrated its attempts to determine entitlement and calculate quantum. As such, the respondent reasons it was not required to pay the IRB, nor was it required by the *Schedule* to hire an external accountant to calculate the IRB quantum.

[65] I find that the respondent's conduct in this case attracts an award. The applicant's IRB was unreasonably delayed onwards from November 23, 2023—the time at which its section 33 requests made on September 8, 2023, were fulfilled. He had provided the OCF-2. The 2022 tax records had also been produced. I accept that Part 5 of his OCF-2 satisfied the requests for information about collateral benefits (i.e., he was not eligible to receive any) and that Part 6 indicated a return-to-work date was not applicable, which I find is consistent with the earlier provided OCF-3 that indicated he was disabled as a result of the accident and unable to return to work.

[66] If the respondent was not prepared to accept the information provided by the applicant at face value at any point prior to the hearing—or otherwise felt it necessary to resolve perceived discrepancies as to the applicant's work activities during the period following the accident to assist with calculating quantum deductions permitted under the *Schedule*—I find it was open to the respondent to arrange an Examination Under Oath ("EUO") in accordance with section 33(2) of the *Schedule*. While the respondent was not obligated to do so, it remains that it did not and therefore, in my view, cannot rely on its "stoppage" notice of February 9, 2024, to show it did not unreasonably delay or withhold IRB payments to the applicant. In my view, this notice is imprudent conduct. It lacked in good judgement because the applicant had, in fact, complied with all reasonable aspects of the respondent's requests for more information to date.

[67] The respondent's section 33 request of October 8, 2025, was also imprudent. The respondent indicated it was still unable to calculate the applicant's IRB quantum because of missing information about collateral benefits pertaining to two earlier accidents. And yet, the adjuster log notes demonstrate the respondent was alive to these earlier accidents more than a year earlier in July 2024 and later indicated the adjuster-of-record was to request the accident benefits files in November 2024. Further, given that records of these accidents—and details of any corresponding collateral benefits received—were not requested at the case conference nor as part of the October 2025 section 33 request, I conclude it was unreasonable to withhold the applicant's IRB on this basis. In addition, the respondent's IRB calculation and October 2025 notice show it stubbornly remained inflexible about forgoing deductions for self-employment income earned between August 16, 2023, and December 31, 2023, despite being

advised in September 2023 that the applicant was unable to work after the accident and despite the Tribunal refusing the respondent's request to order more records for this period at the case conference.

[68] I would also point out here, that I was not directed to evidence that persuades me the respondent raised concerns about the applicant meeting the IRB eligibility criteria at section 5 of the *Schedule* in its series of section 33 requests up to February 2024. For example, the respondent did not request more information from any health care practitioners to assess entitlement to an IRB. The respondent's notice of November 16, 2023, distinguishes between the information (i.e., medical records of training and assessing health care practitioners) it requested to "better understand medical circumstances surrounding your medical condition," and the information (i.e., financial records) it requested to confirm {the applicant's] *entitlement* [emphasis added] to an [IRB]." In my view, this underscores the respondent's imprudence in adjusting the applicant's IRB claim because it indicates the respondent had conceded the applicant's "medical" entitlement to an IRB long before the day of the hearing.

[69] A key concept in accident benefits is the prompt payment of an income benefit. This is reflected in the wording of section 10 of regulation 664 under the *Act*. The lack of prompt payment is not only undesirable under the scheme of the *Act*, but also frequently has serious ramifications for an insured as well. Prompt payment in this case would have commenced in and around the beginning of December 2023. The respondent did not concede IRB entitlement until the day of the hearing. And up to the hearing in November of 2025, the parties agree that no IRB payments had been issued. This is a period of unreasonable delay that totals nearly two years. In my view, a proportionate award is 25 per cent of the total IRB benefits payable.

ORDER

[70] The applicant is entitled to a weekly IRB payment of $45.62 up to 104 weeks after the accident, starting on November 23, 2023. The applicant is also entitled to a weekly IRB payment of $185.00 beginning 104 weeks post-accident and ongoing. Interest is payable in accordance with section 51 of the *Schedule.*

[71] The applicant is entitled to $149.63 plus interest owing on the disputed OCF-18. The respondent is liable to pay an award in the amount of 25 per cent of the total IRB payable.

Released: January 8, 2026

Michael Beauchesne
Adjudicator