Tribunals Ontario | **Tribunaux décisionnels Ontario**

Licence Appeal Tribunal | Tribunal d'appel en matière de permis

Citation: Yu v Co-operators General Insurance Company, 2026 ONLAT 25-016568/AABS - PI

File Number: 25-016568/AABS

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

Between:

Xizhi Yu

Applicant

and

Co-operators General Insurance Company

Respondent

PRELIMINARY ISSUE DECISION AND ORDER

ADJUDICATOR: **Trina Morissette, Vice-Chair**

APPEARANCES:

For the Applicant: Ryan Olson, Counsel

For the Respondent: Nathalie Rosenthall, Counsel

HEARD: **In writing**

OVERVIEW

[1] Xizhi Yu, the applicant, was involved in an automobile accident on January 13, 2023, and sought benefits from Co-operators General Insurance Company, the respondent, pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* ("the *Schedule*"). Per the adjusters' log notes, the applicant was driving her vehicle to work when she was "cut off" by another vehicle. She lost control of her vehicle when she slid on ice and ended up colliding with an electricity pole. The applicant claims to have sustained serious physical and psychological injuries.

[2] The applicant was denied benefits on the basis that she failed to submit her application for benefits (OCF-1) within the timeline stipulated by section 32(5) of the *Schedule*. She applied to the Licence Appeal Tribunal ("the Tribunal") for resolution of the dispute.

[3] The parties participated in a case conference on April 13, 2026, and a written hearing on the substantive issues in dispute has been scheduled for October 16, 2026. As part of its case conference summary, the respondent raised a preliminary issue based on section 32(5), which the Tribunal ordered to be heard in-writing in advance of the substantive issues hearing.

PRELIMINARY ISSUE IN DISPUTE

[4] The Case Conference Report and Order ("CCRO") dated April 13, 2026, identifies the preliminary issue as:

> Is the applicant barred from proceeding with her claim for benefits as she failed to submit the application for benefits (OCF-1) within the time prescribed in section 32(5) of the *Schedule*?

[5] Despite the preliminary issue identified above, the parties' submissions on this preliminary issue are intermixed with arguments based on the statutory requirement set out in section 32(1) of the *Schedule* which states that an insured who intends to apply for accident benefits must notify the insurer of their intention no later than the seventh day after the accident, or as soon as practicable.

[6] The facts in this matter support that the applicant notified the respondent of the accident the same day (January 13, 2023). The respondent argues that the applicant did not report having sustained any injuries in the accident, hence, she did not provide notification of her intent to claim accident benefits. Yet, it carries on with its position that the applicant did not submit her application within the timeframe set out at section 32(5). The applicant argues that the respondent failed to provide her with an accident benefits package as required by section 32(2) when she notified it of the accident.

[7] Raising a preliminary issue based on section 32(5) of the *Schedule* only, rather than including a preliminary issue based on section 32(1) could have been fatal to the respondent's position. Each party has the onus of putting forward their arguments, evidence and authorities to make their case. To ensure procedural fairness, this includes identifying the proper preliminary issue(s) for the Tribunal to consider.

[8] However, here, based on both parties' submissions, I accept that it was the parties' understanding that both sections 32(1) and 32(5) are in dispute.

RESULT

[9] The respondent has not shown that the applicant failed to notify it of her intention to claim accident benefits per section 32(1) of the *Schedule*, or that she failed to submit her application within the timeframe set out in section 32(5). As such, the application shall proceed to a hearing on the substantive issues as previously scheduled.

PROCEDURAL ISSUE – Late service and filing of the applicant's responding submissions

[10] In its reply submissions, the respondent argues that the applicant did not serve her responding submissions in accordance with the April 13, 2026 CCRO and has not provided an explanation for her delay. The respondent, however, did not seek any specific relief.

[11] Paragraph [9] of the CCRO states that the applicant was to serve and file her written submissions, evidence and authorities within 28 calendar days after the case conference. The case conference was held on April 13, 2026 and therefore, the applicant was to serve and file her materials by May 11, 2026. The applicant served and filed her materials on May 12, 2026, less than 24 hours after the ordered deadline.

[12] Pursuant to Rule 9.3 of the *Licence Appeal Tribunal Rules, 2023*, if a party fails to comply with any Rule, direction or order with respect to disclosure, exchange, production, or inspection of documents or things, that party may not rely on the document or thing as evidence without the permission of the Tribunal. When making its determination, the Tribunal may consider any relevant factor, including those stipulated in the Rule.

[13] I find that striking the applicant's submissions because of a one-day delay would not be a proportional remedy. The respondent has not explained how this minor delay has caused it prejudice. It was able to serve and file its reply submissions on time and it did not file a motion to request additional time. I therefore accept the applicant's submissions in the context of this preliminary issue hearing.

ANALYSIS

[14] Section 32(1) of the *Schedule* provides that a person who intends to apply for accident benefits shall notify the insurer of their intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day.

[15] Once an insurer received notice of an applicant's intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 form, a written explanation of the benefits available, information to assist the person in applying for the benefits and information on the election relating to the specified benefits, if applicable (section 32(2)).

[16] Pursuant to section 32(5) of the *Schedule*, the applicant must then submit a completed and signed application for benefits to the respondent within 30 days after receiving the forms.

[17] Section 34 of the *Schedule* states that "a person's failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation." The onus is on the applicant to establish a reasonable explanation for the delay. The interpretation of "reasonable explanation" is guided by *Horvath and Allstate Insurance Company of Canada*, 2003 ONFSCDRS 92 (CanLII) ("*Horvath*"), and was reiterated in *K.H. v. Northbridge*, 2019 CanLII 10163 (ON LAT) ("*K.H.*"). The guiding principles are summarized as follows:

a. An explanation must be determined to be credible or worthy of belief before its reasonableness can be assessed;

b. The onus is on the insured person to establish a "reasonable explanation";

c. Ignorance of the law alone is not a "reasonable explanation";

d. The test for "reasonable explanation" is both a subjective and objective test that should take account of both personal characteristics and a "reasonable person" standard;

e. The lack of prejudice to the insurer does not make an explanation automatically reasonable; and

f. An assessment of reasonableness includes a balancing of prejudice to the insurer, hardship to the claimant and whether it is equitable to relieve against the consequences of the failure to comply with the time limit.

[18] The parties agree that the applicant's OCF-1 was submitted to the respondent on June 23, 2023, approximately five months post-accident. Based on the facts in this matter, this was the first notification the respondent received of the applicant's intention to claim accident benefits.

[19] The respondent submits that the application should be barred because the applicant failed to submit her OCF-1 within the statutory timeline of section 32(5), and because she has not provided a reasonable explanation for her delay as per section 34 of the *Schedule*. In its initial submissions, the respondent submitted that no explanation had been provided by the applicant to date, however, it retracted this position in its reply submissions and conceded that the applicant provided an explanation through her counsel on November 15, 2024. A translation of her explanation dated October 18, 2024, states:

> I, [the applicant], was involved in a traffic accident in January 2023. At that time, I experienced physical pain and my mental state was also affected. In June 2023, I was involved in another traffic accident, it induced my physical injury and mental condition more serious. Through a friend, I learned that I could file claim, so I hired a lawyer to start the compensation process.

[20] The respondent does not explicitly argue the issue of notification per section 32(1) of the *Schedule,* but as per my observations below, I find that its submissions nonetheless address the issue.

[21] The respondent submits that the applicant provided her completed OCF-1 at the same time as an OCF-1 for a second accident that occurred on June 19, 2023. It argues that the timing raises serious concerns regarding the legitimacy of the delayed application and suggests that the claim may have been advanced opportunistically. It relies on *Alassal v. Co-operators General Insurance Company*, 2021 CanLII 13204 (ON LAT).

[22] The applicant submits that the respondent had knowledge of the accident on the exact day it occurred as evidenced by the adjusters' log notes. Despite this knowledge, the applicant argues that the respondent never provided her with an accident benefits package or followed up on her injury status. An accident benefits package was only provided on July 4, 2023 after her OCF-1 had already been submitted. She relies on *Tomec v. Economical Mutual Insurance Co*., 2019 ONCA 882 (CanLII) and *Hussein v. Intact Insurance Company*, 2025 ONSC 842 (CanLII) ("*Hussein*") and submits that the respondent failed to assist her with the accident benefits process. A completed application was submitted as soon as she was made aware she could do so and her explanation for the delay is reasonable.

[23] The respondent concedes that the applicant contacted it on June 13, 2023, but submits that the claim was reported strictly as a property damage claim relating to the vehicle. All additional communications between the parties were related to the vehicle's repairs. It argues that "on multiple occasions" the applicant was asked whether she had sustained any injuries and she responded "no". As such, it submits that it fulfilled all of its obligations as per *Hussein* by making inquiries regarding the applicant's condition and any potential injuries at the time of the claim as evidenced by the log notes.

[24] *Hussein* states that an interpretation of section 32(1) must recognize the reality that consumers who have motor vehicle accidents are in a vulnerable position, particularly in the period immediately following the accident. *Hussein* provides that the insurer has a positive obligation to inquire and assist an insured person with their application for accident benefits and affirms that insurers cannot simply rely on the insured person's inaction to determine that no benefits will be claimed.

[25] The respondent points to paragraph 40 of *Hussein* where the Court found:

> (…) If the Insurer in this case wished to clarify which specific benefits the Insured intended to access, the Insurer could have asked the Insured whether he sustained any injuries. As the Insurer chose not to ask any more questions, it should have acted on the assumption that the Insured would want to apply for accident benefits. At that point, the Insurer should have complied with its obligations under s. 32(2) of the [*Schedule*], which included sending out the necessary application forms and an explanation of the benefits available. (…)

[26] First, I do not accept the respondent's position that it asked the applicant "on multiple occasions" whether she had sustained any injuries in the accident. A review of the adjusters' log notes shows that, on January 13, 2023, at 2:22 p.m., the applicant contacted the respondent to report the accident. A note is made at this moment suggesting the applicant reported "Injuries: no". Later that same day when a claims adjuster contacted the applicant at 4:38 p.m., a second note is made: "No injuries". The respondent has not pointed me to any other times when it would have inquired of the applicant whether she sustained any injuries in the accident. I do not find that asking the applicant twice, on the same day, two hours apart, qualifies as the respondent inquiring of any injuries sustained in the accident "on multiple occasions".

[27] Second, I do not agree with the respondent that *Hussein* supports that the requirements of section 32(2) – providing an accident benefits package – is no longer required if it asked the applicant on the day the accident occurred whether she sustained any injuries, and the applicant responded 'no'. The Court's reference to asking an insured whether they sustained injuries per paragraph 40 of *Hussein* was made by the Court in the context of clarifying which specific benefits are available. In my view, *Hussein* does not state that a respondent's duty to provide the appropriate OCF-1 form, a written explanation of the benefits available, or information to assist the person in applying for benefits is dismissed if the applicant advises the respondent that she did not sustain injuries at the time of the initial accident notification.

[28] I find that asking the applicant twice, on the same day, whether she sustained any injuries in the accident was insufficient to discharge the respondent's obligation outlined in section 32(2) of the *Schedule*. *Hussein* provides that insurers must always consider that accident victims are in a vulnerable position, particularly in the aftermath of an accident. In this case, the respondent failed to appreciate that concept and never made any additional inquiries into whether the applicant was injured in the accident, nor did it provide her with an accident benefits package. Instead, it relied on a statement made on the day the accident occurred.

[29] It is commonly accepted that injuries and their sequalae may not become apparent until days or weeks following an accident. Relying on her statement on the day of the accident is not keeping with the guidance in *Hussein*. To discharge its obligations under section 32(2), the respondent ought to have made additional inquiries into the applicant's status. This could have been satisfied as simply as sending the accident benefits package to the applicant with the requisite information on how to claim benefits.

[30] Third, the 30-day timeline for the applicant to submit her completed OCF-1, as per section 32(5), only applies "after receiving the application forms". Here, the respondent did not provide the applicant with an accident benefits package as per section 32(2) and as such, the 30-day timeline was not triggered. The accident benefits package was only provided to the applicant after she had already submitted her OCF-1. I therefore find that the respondent has not shown that the applicant failed to submit her application 30 days after it provided her with the required application forms.

[31] I acknowledge that this matter is now complicated by the fact that the applicant was involved in a second accident on June 19, 2023, at which time a second OCF-1 was submitted. The onus will still be on the applicant to prove her entitlement to the claims herein at the upcoming substantive issues hearing.

[32] For the purpose of this preliminary issue hearing, I find that the respondent has not satisfied me that the applicant failed to notify it of her intention to claim accident benefits (per section 32(1)) or that she failed to submit her completed application within the 30-day timeframe stipulated at section 32(5). As such, it is unnecessary to determine whether the applicant provided a reasonable explanation for any delay.

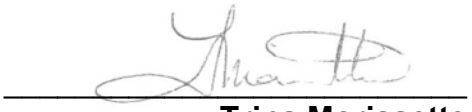
ORDER

[33] For all the above reasons, I find that:

1. The respondent has not shown that the applicant failed to notify it of her intention to claim accident benefits pursuant to section 32(1) of the *Schedule*, or that she failed to submit her application within the timeframe set out in section 32(5).

2. The application shall proceed to a hearing on the substantive issues as previously scheduled.

Released: August 27, 2026



Trina Morissette
Vice-Chair