



**Citation: Lin v. Intact Insurance Company, 2025 ONLAT 25-004901/AABS - PI**

**Licence Appeal Tribunal File Number: 25-004901/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:

**Gong Yu Lin**

**Applicant**

and

**Intact Insurance Company**

**Respondent**

**PRELIMINARY ISSUE DECISION AND ORDER**

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

**APPEARANCES:**

For the Applicant: Sareena Samra, Counsel

For the Respondent: David Koots, Counsel

**Heard:** In writing

## OVERVIEW

- [1] Gong Yu Lin, the applicant, was involved in an automobile accident on April 23, 2024, and sought benefits from Intact Insurance Company, the respondent, 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 the respondent and applied to the Licence Appeal Tribunal (“the Tribunal”) for resolution of the dispute.

## PRELIMINARY ISSUE IN DISPUTE

- [2] The preliminary issue to be decided is whether the applicant is barred from proceeding to a hearing of his application as he failed to notify the respondent of the circumstances giving rise to a claim for benefits no later than the seventh day after the circumstances arose, or as soon as practicable after that day, pursuant to section 32(1) of the *Schedule*?

## RESULT

- [3] The applicant is permitted to proceed with his application.

## BACKGROUND

- [4] On April 23, 2024, the applicant was the driver of a vehicle that turned left to access the on-ramp to Highway 401 in Scarborough. Another vehicle travelling in the opposite direction struck the applicant’s vehicle on the rear passenger side, while he was in the process of turning. The applicant was the sole occupant of the vehicle.
- [5] The OCF-1 submitted by the applicant states that the applicant complained of both physical and psychological injuries including neck and chest pain, loss of hearing, flashbacks, insomnia and anxiety.

## ANALYSIS

- [6] 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.
- [7] Once an insurer receives notice of an applicant’s intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 forms, 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)). 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.

- [8] 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), and was reiterated in *K.H. v. Northbridge*, 2019 CanLII 101613 (ON LAT). 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.
- [9] Additionally, pursuant to *Hussein v. Intact Insurance Company*, 2025 ONSC 842 (CanLII) (“*Hussein*”), 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.
- [10] The respondent submits that on the same day of the accident, the applicant’s daughter contacted the respondent on behalf of the applicant, by telephone, to

advise it of the accident. The respondent submits that the daughter was asked twice whether any injuries had been sustained in the accident to which she answered 'no'. On December 2, 2024 – seven months and nine days following the accident – the applicant submitted his OCF-1 to the respondent.

- [11] The respondent submits that the applicant failed to report his intention to apply for accident benefits within the timeline stipulated in section 32(1) and did not provide a reasonable explanation for the delay. The respondent relies on medical documentation received to date to argue that the applicant did not intend to apply for accident benefits as three of the visits to his family doctor (July 31, 2024, September 16, 2024 and November 4, 2024) make no mention of the accident or any complaints of injuries sustained from the accident. As a result, the application should be dismissed pursuant to section 55(1) of the *Schedule*.
- [12] The applicant submits that he provided notice of the accident to the respondent on the very same day. Although his daughter made the call on his behalf, the applicant was also present. The applicant submits that the respondent took no measures to assist him, such as having an interpreter present during the call, and that “unclear information was provided by his daughter.” The applicant argues that the respondent never provided an accident benefits package following the telephone call, thus, the limitation period of section 32(5) was never triggered. Ultimately, the applicant submits that he never advised the respondent that he did not intend to bring a claim, and when he did, he provided a clear and unequivocal explanation for the delay.
- [13] The applicant explained in a letter accompanying the OCF-1 that he refrained from filing the claim because, at that time, he believed his reporting would lead to an increase in premiums, and also because he was not informed that, even though the accident may be his fault, he would still be entitled to medical and other benefits.
- [14] Both parties rely on *Hussein* to support their respective positions: the applicant to emphasize that claimants are in a vulnerable position following an accident as well as the consumer protection mandate of the *Schedule*, and the respondent to submit that, as suggested in *Hussein*, it expressly inquired of the applicant whether any injuries had been sustained in the accident.
- [15] Both parties also rely on an audio recording of the telephone conversation between the applicant, his daughter and the respondent that occurred following the accident on April 23, 2024. An unofficial transcript of the recording was also submitted.

[16] I have listened to the audio recording and reviewed the unofficial transcript of the call of April 23, 2024. The respondent submits that during this call, the daughter was asked twice whether there were any injuries to which she responded 'no'. For clarification, the respondent explains that the second time she was asked, the daughter's response was not clear but it submits that "from context and given the next question moved on to another topic", the respondent submits that the daughter confirmed there were no injuries. These two inquiries proceeded as follows:

<b>1<sup>st</sup> inquiry: Between 0:00 and 0:59 of the recording:</b>
<p>Respondent's representative: <i>"Thanks for calling Claims Department, my name is [...], how may I assist you today?"</i></p> <p>Daughter: <i>"Hi there, I just wanted to submit a claim, so we had a collision today and I have the collision report number."</i></p> <p>Respondent's representative: <i>"Sure I will be more than happy to assist and so sorry to hear that, and just to confirm, everything is ok, any injuries to you at the time of accident?"</i></p> <p>Daughter: <i>"No injuries."</i></p>
<b>2<sup>nd</sup> inquiry: Between 12:56 and 14:01 of the recording:</b>
<p>Respondent's representative: <i>"So no injuries as you mentioned, is it right?"</i></p> <p>Daughter: <i>"Pardon?"</i></p> <p>Respondent's representative: <i>"No injuries were involved, correct? Everything is fine?"</i></p> <p>Daughter: <i>[unclear response, possibly "ya, correct."]</i></p> <p>Respondent's representative: <i>"Ok."</i></p>

[17] The respondent submits that it was clear that the questions were being asked about the participants in the accident and not the daughter herself, and on a

balance of probabilities, it is more likely than not that the reasons she reported “no injuries” is because her father did not report any injuries.

- [18] I disagree and find that neither of these inquiries confirm that the applicant advised the respondent that he did not sustain injuries due to the accident. In the first instance, the representative was of the belief that the daughter was involved in the accident and asked whether she had sustained any injuries, to which she answered “[n]o injuries”. It was following this exchange that the daughter clarified that she was calling on behalf of her father who was the sole occupant of the vehicle at the time of the accident. In the second exchange when the representative asked the daughter to confirm there were no injuries caused by the accident, the unofficial transcript suggests that the daughter “possibly” answered “ya, correct”. Having listened to the recording, I am not persuaded that the suggested response is accurate. In my view, no clear response can be deduced.
- [19] The respondent also submits that none of the reported damage to the vehicle would suggest a high chance of injuries to the applicant in these circumstances. While an airbag was deployed, this was on the passenger side only and the driver’s airbag did not deploy. In this context, it was reasonable for the respondent’s representative to conclude that the daughter had confirmed there were no injuries when asked the second time.
- [20] I agree with the applicant that it was improper for the representative to determine, based on the damage to the vehicle, that no injuries were sustained. He is not a medical professional.
- [21] The respondent also relies on clinical notes and records of the applicant’s family physician to show that, since he did not complain of any injuries to his doctor – nor did he mention he was in an accident – the applicant had no injuries to report to the respondent during the call. The respondent also submits that the applicant did not call for an ambulance nor did he attend the hospital on the day of the accident, further confirming no injuries were sustained.
- [22] I note that the respondent also submits that it is awaiting the production of further medical records it has requested of the applicant. I find that this preliminary issue hearing is not the proper forum to determine whether the applicant has satisfied his onus that he sustained injuries and that he is entitled to the claims he seeks. The merits of the applicant’s claim will be determined at the hearing of the substantive issues when all relevant documentation will be submitted.

- [23] The respondent relies on *Hussein* and submits that while the Court indicated that there is an obligation to ask about whether any injuries occurred in order to rely on section 32(1), it did not impose an obligation to advise about accident benefits or to send out forms in the event the insurer asks about injuries and the insured advises no injuries were sustained. It also relies on *Raja v. Economical Mutual Insurance Company*, 2025 CanLII 35963 (ON LAT); *Belyak v. Definity Insurance Company*, 2025 CanLII 39301 (ON LAT); and *Abbanay v. PAFCO Insurance Company*, 2012 ONFSCODRS 144 (CanLII).
- [24] For the purpose of determining whether the applicant satisfied the requirements of section 32(1), I acknowledge that in *Hussein*, the Divisional Court recognizes that insurers' "agents or adjusters can simply confirm beforehand that the insured was not, in fact, injured in the accident" (at para. 40). However, as I have found above, I am not persuaded that the respondent received a clear confirmation that no injuries were sustained in this matter. In any event, injuries may arise in the days or weeks following an accident. I find that asking an individual in the hours following an accident whether they sustained injuries, and only sending out an accident benefits package as per section 32(2) if the applicant confirms injuries were sustained at that time, is not line with the consumer protection mandate of the *Schedule*.
- [25] I also note that during the call on April 23, 2024, the representative spoke directly to the applicant on two occasions. Having confirmed by then that the applicant was the sole occupant of the vehicle, the representative could have asked the applicant directly whether he had sustained any injuries. I specifically note that on the first occasion, the applicant's response to the representative provided a clear invitation for the representative to do so. The exchange went as follows:

**Between 3:00 and 4:11 of the recording:**

Respondent's representative: *"Sure. And if you don't mind, like can I speak with him before we proceed further? I just need to take the permission from him and after that I will take the information from you."*

Applicant: *"Hello Sir."*

Respondent's representative: *"Hi Sir, how are you doing today?"*

Applicant: *"Very bad, so bad."*

Respondent's representative: *"Ya I can understand the situation sir. So before I can proceed further Sir, I just need your consent so that I will proceed further. I am just reading the consent. Do let me know, shall I proceed further or not. We require your consent to collect and share your information for the purpose of processing the claim. This is a requirement for privacy law. I am going to read a privacy scripting to you and after which we will require your consent to move forward. For the purpose of understanding and handling any claim, we must obtain your consent for the collection, use and disclosure of your personal information. So do we have your consent for the same?"*

Applicant: *"Yes. Yes."*

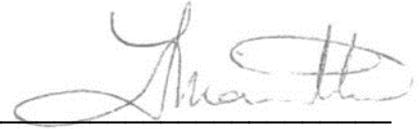
Respondent's representative: *"Alright Sir, thank you very much, you can pass the phone to your daughter. And once I need your information more I will ask you for the same. Right, thank you."*

- [26] I therefore find that the applicant notified the respondent of the circumstances giving rise to a claim for benefits pursuant to section 32(1) of the *Schedule*. Although the respondent attempted to obtain information whether the applicant sustained injuries in the accident, in my view, the respondent did not receive a clear confirmation. Pursuant to *Hussein*, the respondent should have acted on the assumption that the insured would want to apply for accident benefits at that time, or in the days or weeks following the accident, and complied with its obligations under section 32(2) which included sending out the necessary application forms and an explanation of the benefits available.
- [27] The respondent has expressly stated that it is not raising a preliminary issue challenging the applicant's filing of his OCF-1 as per section 32(5). In any event, in my view, as the respondent never provided the applicant with the necessary forms, the 30-day timeline to submit a completed OCF-1 per section 32(5) was never triggered. As such, there is also no need to consider whether the applicant provided a reasonable explanation for the delay in submitting his OCF-1.
- [28] Accordingly, I find that the applicant is not disentitled from receiving benefits and may proceed with his application.

**ORDER**

[29] The applicant may proceed with his application before the Tribunal.

**Released:** November 18, 2025

A handwritten signature in cursive script, appearing to read 'Trina Morissette', written in black ink.

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**Trina Morissette  
Vice-Chair**