



Tribunal File Number: 19-012118/AABS

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

Between:

Kimberley Joslin-Mielke

Applicant

and

Pembridge

Respondent

MOTION ORDER

Order made by: Terry Hunter, Vice Chair

Date of Order: April 20, 2021

OVERVIEW

- [1] The applicant was injured in an automobile accident on **Monday, May 23, 2016**, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The applicant was denied certain benefits and applied
- [3] to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [4] A case conference took place on **Monday, June 8, 2020** and an order was issued scheduling a written hearing and setting submission dates for the parties. The Case Conference Order prohibited the use of affidavit evidence.

MOTION

- [5] On **March 12, 2021**, the respondent filed a Notice of Motion requesting that the Tribunal;
 - i. Strike the applicant's reply submissions.
- [6] The applicant did not consent to the motion.

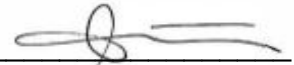
RESULT

- [7] The applicant's reply is struck from the record for the hearing.
- [8] The applicant concedes that there is no evidentiary basis for submissions at paragraph 3, 5, 6, 7 8 and endnote vii. The applicant concedes that reference was made in paragraph 3 and end notes iv, v and vi to documentation that was not contained in her evidence brief.
- [9] The applicant submits there is no prejudice to the respondent as the unsupported comments are contextual in nature. The reference to documents not in the hearing brief is not prejudicial because the documents themselves have been produced as part of the document exchange. I disagree. The rules and decisions on what constitute a proper reply are clear. It is not an opportunity to incorporate materials not previously found in the hearing brief or evidence before the Tribunal. I am confident a hearing adjudicator would give no weight to the unsupported submissions and references to documents not before the Tribunal.
- [10] In most cases the Tribunal permits the reply to go to the hearing adjudicator while allowing the opposing party a sur-reply. The applicant opposes a sur-reply, so the only remedy is to strike the reply.
- [11] **Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.**

OTHER PROCEDURAL MATTERS

- [12] If the parties resolve the issue(s) in dispute prior to the hearing, **the applicant** shall immediately advise the Tribunal in writing.

Date of Issue: April 20, 2021



**Terry Hunter
Vice Chair**