



**Citation: Security National Insurance Company v. Bradbury, 2023 ONLAT  
21-012847/AABS**

**Licence Appeal Tribunal File Number: 21-012847/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:

**Security National Insurance Company**

**Applicant**

and

**Heather Bradbury**

**Respondent**

**DECISION**

**VICE-CHAIR:**

**Brett Todd**

**APPEARANCES:**

For the Applicant:

Peter Durant, Counsel

For the Respondent:

No Submissions Filed

**HEARD:**

**By way of written submissions**

## OVERVIEW

- [1] Heather Bradbury (the “respondent”) was involved in an automobile accident on April 22, 2015 and sought benefits from Security National Insurance Company (“the applicant”) pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the “Schedule”).
- [2] The applicant paid income replacement benefits (“IRB”) to the respondent following the accident. However, the applicant claims that IRB overpayments were made due to wilful misrepresentation by the respondent involving her receipt of long-term disability (“LTD”) benefits from another insurer, Desjardins Insurance. Therefore, the applicant requests that the respondent repay IRB.
- [3] As the respondent did not respond to requests to repay the benefits, the respondent applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [4] The issues in dispute are:
  - i. Is the applicant entitled to a repayment in the amount of \$280,447.35 relating to its payment of IRB for the period of June 6, 2015 to January 3, 2021?
  - ii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [5] I find that the applicant is entitled to an IRB repayment in the amount of \$280,447.35 due to wilful misrepresentation, pursuant to ss. 52 of the *Schedule*, plus interest pursuant to ss. 52(5) and 52(6).

## ANALYSIS

### Reasonable Notice Obligations

- [6] I find that the Tribunal has met its reasonable notice obligations. Therefore, I am proceeding with this written hearing in the absence of the respondent.
- [7] Proceeding with a written hearing where a party fails to participate, under s. 7(2) of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 (“*SPPA*”), requires the Tribunal to be satisfied that the absent party received notice of the written hearing that complies with ss. 6(1) and 6(4) of the *SPPA*.

- [8] A case conference was held on October 4, 2022 with only the applicant in attendance. Notice was sent to both parties on December 16, 2021. The case conference adjudicator waited 30 minutes and requested that the Tribunal contact the respondent. This was not successful, so the adjudicator proceeded with the case conference in the absence of the respondent.
- [9] This case conference resulted in a Case Conference Report and Order (“CCRO”) dated November 17, 2022 that set the matter down for a written hearing. This CCRO included production orders and deadlines for written submissions and evidence. The applicant’s submissions and evidence were due 30 calendar days prior to the scheduled hearing; the respondent’s submissions and evidence were due 14 calendar days prior to the scheduled hearing; and the applicant’s reply submissions were due 7 calendar days prior to the scheduled hearing.
- [10] The Tribunal initially set the written hearing date for February 9, 2024 and sent notice to both parties both electronically and through the mail to the last known address of the respondent. The Tribunal subsequently changed the written hearing date to June 23, 2023, and sent notice to the parties again as of December 28, 2022.
- [11] The respondent also failed to attend or provide submissions for a Tribunal motion order hearing held on April 26, 2023. In the absence of the respondent, on April 27, 2023 the Tribunal issued an order granting the applicant’s motion that the respondent provide a number of benefits files and financial documents related to the IRB issue and the Desjardins LTD insurance policy “forthwith.”
- [12] The applicant filed its written submissions and evidence for the hearing on May 24, 2023, in accordance with the timeline as established by the CCRO. The respondent failed to file any written submissions or evidence for the hearing, or in response to the order described above. The Tribunal also attempted to contact the respondent by phone on June 29, 2023 without success.
- [13] Also, there is no evidence that the respondent’s contact information changed or was otherwise incorrect in Tribunal records. If the respondent’s address differed from what was originally provided to the Tribunal, she had an obligation under Rule 4.4 of this Tribunal’s *Common Rules* to notify the Tribunal with the correct information.
- [14] As a result, I find that the respondent knew of this proceeding and chose not to participate. I am satisfied that the Tribunal has met its notice obligations pursuant to s. 7(2) of the *Statutory Powers Procedure Act* and is in compliance with ss. 6(1) and 6(4) of the *SPPA*.

## **IRB Repayment**

- [15] The applicant is permitted to claim a repayment of IRB and other benefits in certain situations and subject to certain conditions as established by the *Schedule*.
- [16] Section 7 of the *Schedule* addresses the amount of weekly IRB payable to an insured person who becomes entitled to the benefit before his or her 65<sup>th</sup> birthday. It establishes a weekly base amount maximum of \$400.00 for IRB unless an optional IRB benefit as referenced in s. 28(1)1 of the *Schedule* has been purchased by the insured person. In this instance, the respondent had purchased such optional benefits and received \$1,000.00 per week in IRB during the time period at issue. This is described in greater detail below.
- [17] Section 52(1)(a) of the *Schedule* provides that an insured person is liable to repay an insurer any benefit paid as a result of wilful misrepresentation or fraud. Further, s. 52(1)(b) provides that an insured person is liable to repay an insurer any IRB paid if the insured person was disqualified from receiving IRB.
- [18] Section 52(2) of the *Schedule* provides that the applicant must give the respondent notice of the amount that is required to be repaid. Section 52(3) limits the applicant's repayment claim to 12 months from the notice described in s. 52(2) unless the overpayment is due to wilful misrepresentation or fraud.
- [19] Further, s. 47 of the *Schedule* provides that an insurer may deduct certain amounts from the amount payable to an insured person for IRB. This includes temporary disability benefits and any other periodic benefit being received by the insured person.

### ***Notice of repayment request satisfied***

- [20] I find that the applicant has satisfied repayment notice requirements as specified in the *Schedule*.
- [21] As indicated above, s. 52(2) of the *Schedule* provides that the applicant must give the respondent notice of the amount of any amount required to be repaid.
- [22] In submissions, the applicant provided copy of a notice sent to the respondent on January 8, 2021 that she was being requested to repay \$280,447.35 in IRB plus interest. This correspondence included an accounting report from Price Waterhouse Coopers ("PWC") dated December 22, 2020 that noted the amount of IRB overpayment, an assessment of the amount that the respondent had been paid in long-term disability ("LTD") benefits from Desjardins Insurance, and a

calculation of the actual amount of IRB owed to the respondent during the time period in question.

- [23] In this correspondence, the applicant requested that the respondent reply within 15 days to discuss repayment options. It claims that the respondent never replied to this letter, or indeed, any letters. As the applicant has failed to participate in this proceeding, there is no evidence before me to the contrary.
- [24] Accordingly, I accept the submissions of the applicant and find that the notice sent on January 8, 2021 is sufficient to meet s. 52(2) of the *Schedule*.

***Twelve-month repayment limitation period is not applicable***

- [25] I find that the applicant's entitlement to IRB repayment is not limited to 12 months as the respondent wilfully misrepresented her LTD status.
- [26] As described above, s. 52(3) of the *Schedule* bars an insurer from seeking repayment of a benefit if notice is not given within 12 months after the payment of the amount that is to be repaid—"unless it was originally paid to the person as a result of wilful misrepresentation or fraud."
- [27] Documents adduced by the applicant make it clear that the respondent wilfully misrepresented her status with regard to an LTD benefit from Desjardins while collecting IRB. The applicant submitted letters that it sent the applicant on at least 10 occasions between July 2015 and August 2020 requesting particulars of the LTD policy that the respondent held with Desjardins.
- [28] Each of these letters included the provision that "if it is determined that there has been an overpayment of the Income Replacement Benefits, while you have been receiving the Long Term Disability Income, you will be required to reimburse any and all overpayments to us." The applicant alleges that the respondent failed to respond to any of these notices, or phone calls, during the same period of time.
- [29] Further, the applicant submits that the respondent had been denied LTD by Desjardins and was disputing the matter with that insurer during the period in question. In submissions, the applicant provided a letter dated November 12, 2020 from the respondent's counsel in the Desjardins matter, which noted that she had been approved for LTD in correspondence dated November 10, 2020.
- [30] Also, the applicant relies on *Aviva General Insurance Company v Muthusamythevar*, 2020 CanLII 94791 (ON LAT) and *17-000272 v T.T.*, 2017 CanLII 87539 (ON LAT), past decisions of this Tribunal that found silence and/or a failure to report to constitute wilful misrepresentation. While I am not bound by

other Tribunal decisions, I am in agreement here. The respondent in this matter chose not to cooperate with her insurer from 2015-2020, ignoring requests for information on her LTD status that also detailed the repayment consequences. Following this, she compounded her issues by refusing to participate in this Tribunal application. To me, all of the steps not taken by the respondent constitute action by inaction and rise to the level of wilful misrepresentation.

- [31] For the above reasons, it is clear to me that the respondent knew or ought to have known that she was misrepresenting her LTD status when she did not respond to the numerous attempts that the applicant made to contact her regarding this issue for some five years. Letters produced by the applicant also make it apparent that the respondent was aware that LTD benefits could result in an IRB repayment request.
- [32] As a result of this wilful misrepresentation, the applicant is allowed to seek repayment of the IRB amount at issue beyond the 12-month mark, pursuant to s. 52(3) of the *Schedule*.

***IRB repayment ordered***

- [33] I find that the applicant is entitled to \$280,447.35 in repayment of the IRB that was paid to the respondent from June 6, 2015 to January 3, 2021, given the wilful misrepresentation noted above, pursuant to s. 52(2) and s. 47 of the *Schedule*.
- [34] As also detailed above, the applicant submits that the applicant received IRB in the amount of \$1,000.00 per week between June 6, 2015 and January 3, 2021, resulting in a total of \$289,285.71 in IRB being paid to the respondent. The applicant submitted the aforementioned PWC accounting report dated December 22, 2020 to substantiate its repayment request dated January 8, 2021. This report also included calculations that the respondent was entitled to \$12,838.26 in IRB, and that after the Desjardins LTD payment was deducted pursuant to s. 47 of the *Schedule* the weekly IRB quantum was \$0. As a result, the IRB repayment demand was for \$280,447.35.
- [35] I accept the PWC report, as the document is comprehensive and well-reasoned in its calculations and conclusions. Also, as the applicant has failed to participate in this proceeding, there is no evidence that would cause me to doubt this report or the calculations that substantiated the amount of the IRB repayment being sought by the respondent.

[36] For the reasons above, the respondent is liable to pay \$280,447.35 to the applicant due to IRB overpayment.

***Interest***

[37] Interest applies to the overdue repayment of benefits, pursuant to s. 52(5) of the *Schedule*. Having concluded that the applicant is entitled to a repayment of IRB in the amount of \$280,447.35, it follows that it is entitled to interest payable in accordance with the bank rate as noted in ss. 52(5) and 52(6) of the *Schedule*.

**ORDER**

[38] The respondent is ordered to repay IRB to the applicant in the amount of \$280,447.35 due to wilful misrepresentation, pursuant to ss. 52 of the *Schedule*, plus interest pursuant to ss. 52(5) and 52(6).

**Released: November 15, 2023**



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**Brett Todd  
Vice-Chair**