



Citation: Zill v. Definity Insurance Company, 2026 ONLAT 25-012180/AABS - PI

Licence Appeal Tribunal File Number: 25-012180/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:

Ammara Zill

Applicant

and

Definity Insurance Company

Respondent

PRELIMINARY ISSUE DECISION AND ORDER

ADJUDICATOR: Trina Morissette, Vice-Chair

APPEARANCES:

For the Applicant: Ognjen Miketic, Counsel

For the Respondent: Peter A.B. Durant, Counsel

HEARD: In writing

OVERVIEW

- [1] Ammara Zill, the applicant, was involved in an accident on September 7, 2024, and sought benefits from Definity 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 with her claim for benefits as she failed to submit her application for benefits (OCF-1) within the time prescribed in the *Schedule*.

RESULT

- [3] The applicant did not notify the respondent of the incident within the timeline prescribed by the *Schedule* and has not provided a reasonable explanation for the delay.
- [4] The applicant is barred by section 55(1) from proceeding with her application before the Tribunal.

ANALYSIS

The applicant has not provided a reasonable explanation for her delay

- [5] 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.
- [6] 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.

- [7] 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 101613 (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.
- [8] On September 7, 2024, the applicant was the passenger in a vehicle being driven by her husband when a large dog charged and ran into the passenger side of the vehicle. In a Statutory Declaration dated August 19, 2025, the applicant states that her knee hit against the door, her eyeglasses were broken, and her body hit the front interior of the vehicle. She immediately felt chest pain and pain in her knees and complains of pain in her knees, shoulder and chest, headaches and nausea. Following the accident, she could no longer work as a makeup artist. The applicant was in a previous accident on December 8, 2021.
- [9] The applicant also reported that the dog was “ok” and added that the owner immediately took him to the animal hospital.

- [10] On September 9, 2024, the applicant notified the respondent of the accident. The adjuster's log notes of the conversation indicate: she reported neck and back pain along with headaches; she would be attending for treatment; she has had multiple accident benefit claims within the last three years; and "she also noted she has a lawyer".
- [11] That same day, the respondent provided the applicant with an accident benefits package by email. In the correspondence accompanying the package, the applicant was advised that if she wants to make a claim for accident benefits, she must fill out and return the enclosed OCF-1 and OCF-5 by October 9, 2024. It states: "[s]ending the forms in after 10/9/2024 will delay your access to benefits and may jeopardize your entitlement to benefits all together unless you have a reasonable explanation for the delay."
- [12] On October 2, 2024, the respondent followed up with the applicant. The adjuster's email states: "I am following up with regards to my below email. Please note if you intend to open up a[n] accident benefit claim we require the completed accident benefit claim no later than October 9, 2024."
- [13] On February 24, 2025, 170 days post-accident, the respondent was contacted by applicant's counsel and advised that she had been retained on behalf of the applicant. In applicant's counsel's correspondence to the respondent, she requested the complete accident benefits file, including a summary of benefits and assessments. In an email response of the same day, the respondent advised applicant's counsel that they had not yet received the OCF-1 which was due October 9, 2024.
- [14] On July 15, 2025, a completed OCF-1 is submitted to the respondent being 311 days post-accident. On July 30, 2025, the applicant is asked to provide a reasonable explanation for the delay in submitting her application by August 13, 2025.
- [15] An email submitted by the applicant's legal representative dated August 15, 2025 states:

I spoke to the client and got the answers, as follows

August 15, 2025 – um (*sic*)

- Spoke to the client and she said she met with an accident (*sic*) on Sept 7, 2024. She would be alright with home remedies and homeopathy treatment

- She bought a heat pad and the massager etc. and try to suppress the pain and it was helping for short time only
- Her dad is a homeopathy doctor the doctor mostly heal not only the injury. But the mind and soul too
- She uses the homeopathy medicine as well with the heat pad etc.
- When it was given the temporary relief and wouldn't last for long, decided to go and see a chiropractor and decided to go for claim to get further treatment

[16] The thrust of the applicant's explanation is that it was her belief that her injuries would resolve with homeopathy treatment and home remedies. She pursued benefits once it became clear that additional treatment was necessary.

[17] The respondent submits that the applicant's belief that she would get better is not a reasonable explanation and does not explain why she did not make an application in order to comply with the *Schedule*. It argues she could have submitted her application and simply delayed seeking further treatment. The respondent also points to the applicant's initial conversation where she notified the respondent of the accident, confirmed she sustained injuries, advised she had counsel at the time and presumably some familiarity with the accident benefits process due to a previous accident benefits claim. The respondent also argues that even after receiving notification that she retained counsel on February 24, 2025, the OCF-1 was further delayed an additional 141 days.

[18] The applicant submits she believed her symptoms would improve through conservative and home-based treatment. The homeopathic care and home remedies provided temporary relief which led her to believe formal treatment might not be required. As time progressed and her symptoms persisted without meaningful resolution, the applicant at that time understood that it would be necessary to access accident benefits. She submits that she subsequently retained legal counsel and submitted the completed OCF-1 on July 15, 2025 "demonstrating a clear intention to pursue her statutory entitlement once the need became apparent."

[19] I find the applicant has not provided a reasonable explanation for her delay in submitting her application for accident benefits.

[20] A belief that she would get better and receiving homeopathic treatment in the interim are not reasonable explanations for not submitting her application within the timeline set out in the *Schedule*.

- [21] The applicant claims she retained counsel on February 24, 2025 to assist her in pursuing accident benefits, yet applicant's counsel did not submit her OCF-1 until an additional 141 days had further lapsed, despite being advised that the OCF-1 remained outstanding.
- [22] The applicant also submits that she provided timely notice by reporting the accident and her injuries to the respondent within days, thereby fulfilling the core purpose of section 32 which is to ensure early awareness, permit investigation, and prevent prejudice arising from lack of notice. I do not accept this argument as the respondent's ability to investigate and begin assessing the file only begins with the receipt of the applicant's OCF-1.
- [23] An assessment of reasonableness includes a balancing of prejudice to the respondent, hardship to the applicant, and whether it is equitable to relieve against the consequences of the failure to comply with the time limits at section 32.
- [24] The respondent submits it suffered prejudice as it has been deprived of its ability to contemporaneously assess the applicant, to investigate the circumstances, to conduct assessments, to gather medical records, and, to conduct surveillance in the ten months immediately following the accident. It argues that this prejudice is partly significant given the unusual circumstances of the accident where a dog ran into the side of the vehicle.
- [25] The applicant submits that denying her access to benefits would impose significant hardship by restricting her ability to obtain necessary treatment and would create an inequitable outcome disproportionate to the procedural delay. She argues that allowing the application to proceed would allow the dispute to be resolved on its merits while causing minimal, if any, prejudice to the respondent.
- [26] I do not find a nine-month delay to be minor. I also find the prejudice to the respondent and its inability to investigate her claim earlier is compounded by the applicant's claim that she has not returned to her self-employment as a makeup artist, or her pre-accident activities, and the unusual circumstances of the accident.
- [27] Taking into account the principles of *K.H.*, I find that the applicant's explanation for her delay in submitting her application is not reasonable. The delay in this matter is long and has caused prejudice to the respondent in fulfilling its obligations to investigate and conduct contemporaneous medical assessments. I am therefore not persuaded that it would be equitable to relieve against the

consequences of the applicant's failure to comply with the statutory requirement of section 32(5) of the *Schedule*.

[28] For these reasons, I find that the applicant has not met her onus to establish a reasonable explanation for her delay.

Section 55

[29] Pursuant to section 55(1)1 of the *Schedule*, an insured person shall not apply to the Tribunal under section 280(2) of the *Insurance Act* if the insured person has not notified the insurer of the circumstances giving rise to the claim or has not submitted an application for the benefit within the time limits prescribed in section 32.

[30] As outlined above, I find that the applicant did not submit an application for benefits within the timelines prescribed by the *Schedule* and has not provided a reasonable explanation for the delay. Accordingly, I find that the applicant is statute-barred from proceeding with her application before the Tribunal.

ORDER

[31] For all the above reasons, I find:

- i. The applicant did not submit her OCF-1 within the timeline of section 32(5) of the *Schedule* and has not provided a reasonable explanation for her delay.
- ii. The applicant is barred by section 55(1) from proceeding with her application before the Tribunal. The Tribunal shall vacate any date that has been scheduled for the substantial issues hearing.
- iii. The application is dismissed.

Released: May 20, 2026



Trina Morissette
Vice-Chair