



Tribunals Ontario

Licence Appeal
Tribunal

Tribunaux décisionnels Ontario

Tribunal d'appel en matière de
permis

Citation: Sutton v Definity Insurance Company, 2026 ONLAT 26-001004/AABS - PI

File Number: 26-001004/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:

Faye Sutton

Applicant

and

Definity Insurance Company

Respondent

PRELIMINARY ISSUE DECISION AND ORDER

ADJUDICATOR: Trina Morissette, Vice-Chair

APPEARANCES:

For the Applicant: Bill McDermott, Paralegal

For the Respondent: Jonathan White, Counsel

HEARD: In writing

OVERVIEW

[1] Faye Sutton, the applicant, was involved in an accident on December 5, 2024, when she was rear-ended while stopped at an intersection. She 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 respondent denied the applicant’s claim on the basis that she did not notify the respondent of her intent to claim accident benefits within the timeframe of section 32(1) of the *Schedule*. The applicant applied to the Licence Appeal Tribunal (“the Tribunal”) for resolution of the dispute.

[2] The parties participated in a case conference on May 12, 2026, and a two-day videoconference hearing was scheduled to commence on September 1, 2026 but pursuant to an Adjournment Order dated June 10, 2026, the two-day hearing was adjourned to commence on October 20, 2026. As part of its case conference summary, the respondent raised the preliminary issue herein and the Tribunal ordered that the preliminary issue be heard in-writing in advance of the substantive issues hearing.

PRELIMINARY ISSUE IN DISPUTE

[3] The preliminary issue to be determined is whether the applicant is barred from proceeding to a hearing as she 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 as set out in section 32(1) of the *Schedule*.

RESULT

[4] 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. As such, the applicant is barred by section 55(1) from proceeding with her application before the Tribunal.

ANALYSIS

[5] There is no dispute that the applicant did not notify the respondent of the circumstances giving rise to her claim for benefits within seven days of the accident. The parties concede that the first notification to the respondent was when the OCF-1 was submitted on April 9, 2025, four months and four days after the accident.

[6] In an examination-under-oath (“EUO”) held on July 24, 2025, the applicant explained that the delay was due to the fact that she did not relate her symptoms to the accident until the spring of 2025, when her symptoms worsened. In her responding submissions on this preliminary issue, the applicant submits that: she had no symptoms immediately after the accident; she did not realize she was injured until almost five months later; she had no reason to apply for benefits earlier; and once she realized she was injured, she acted as soon as practicable and provided multiple authorizations to the respondent for medical documentation, which she argues, demonstrates full cooperation.

[7] In a Statutory Declaration dated May 20, 2025, the applicant complains of neck, shoulder, arm and finger pain, as well as pain to the upper and lower back. She also indicates that she has suffered from depression over the last ten years.

The applicant has not provided a reasonable explanation for her delay in notifying the respondent of her intention to claim accident benefits

[8] 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.

[9] 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.

[10] 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.

[11] The respondent argues that the medical evidence obtained shows that she had a number of health issues prior to the accident. It points to degenerative changes to her cervical spine identified on May 20, 2025, severe degenerative changes in both knees identified in a February 27, 2025 x-ray, bilateral knee arthroscopies due to a torn meniscus in 2020, gastric bypass surgery on December 23, 2024 after which she experienced upper back and neck pain radiating to the bilateral arms, and a prior diagnosis of bipolar disorder and depression. The respondent therefore argues that a reasonable person in the applicant's position with prior upper back, neck and knee pain would have consulted a physician after the collision and reported the accident to the respondent without delay. Also, the respondent submits that the applicant has not demonstrated with medical evidence how she first became aware in April 2025 that her muscular pains were linked to the accident. As such, it argues that the applicant's explanation for the delay is not reasonable nor credible.

[12] The applicant submits that her explanation for the delay in notifying the respondent is reasonable. She argues that she experienced no immediate symptoms after the accident and continued working. It was only over the next several months that she developed the neck pain, back pain, headaches, dizziness, psychological symptoms, and obtained a diagnosis of whiplash-associated disorder (WAD III) with neurological signs.

[13] I do not find the applicant's explanation credible or worthy of belief. The applicant has not pointed me to any evidence that shows she sustained any injuries due to the accident or the diagnosis of WAD III with neurological signs that would have provided a reasonable explanation for the delay in notifying the respondent.

[14] The medical documentation provided to the Tribunal, submitted by the respondent, does not make mention of the December 5, 2024 motor vehicle accident until April 23, 2025 when the applicant attended the emergency department. The hospital records of this day simply note that the applicant reported she had been in an accident in December 2024 and felt “no pain immediately following the [accident].” There is no indication that the pain she complained of on this day was due to the accident. Rather, hospital records of February 27, 2025 indicate that the applicant reported, in regards to her knee pain, that she “might have sustained [the] injury while chasing after her autistic son.” I also find it noteworthy that the sole reference to the accident in the medical documentation was made two weeks after the applicant submitted her application to the respondent for accident benefits.

[15] Submissions are not evidence and without corroborating evidence to support the applicant’s assertions that the injuries she complains of were due to the accident and only discovered later, I find she has not satisfied her onus of showing she has a reasonable explanation for the delay in notifying the respondent as per section 32(1) of the *Schedule*.

[16] Pursuant to the principles set out in *Horvath*, 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.

[17] The respondent submits that it was deprived of the opportunity to investigate the circumstances of the accident or obtain a contemporaneous account from the applicant of the details of the accident. Also, it argues that the applicant’s history of psychological impairments and degenerative symptoms in the cervical spine and knees exacerbates its prejudice.

[18] The applicant submits that the respondent suffered no prejudice as it had full authority to obtain her medical records. She makes no submissions of any hardship she sustained due to her failure to notify.

[19] Having claimed no hardship and failing to provide a reasonable explanation for her delay in notifying the respondent of her intention to claim accident benefits until over four months after the accident, I find that the applicant has not provided evidence to support she was unable to fulfill the requirements of section 32. As a result, I find this caused prejudice to the respondent in fulfilling its obligations to investigate and assess her claim.

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

Section 55

[21] 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.

[22] As outlined above, I find that the applicant did not notify the respondent within the timelines prescribed by the *Schedule* and he 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

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

1. 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.
2. The applicant is barred by section 55(1) from proceeding with her application before the Tribunal. The Tribunal shall vacate any dates that have been scheduled for the substantive issues hearing.

3. The application is dismissed.

Released: September 23, 2026

A handwritten signature in cursive script, appearing to read 'Trina Morissette', is positioned above a horizontal line.

**Trina Morissette
Vice-Chair**