

LICENCE APPEAL TRIBUNAL

Safety, Licensing Appeals and Standards
Tribunals Ontario



Citation: Thompson v. Intact Insurance, *Insurance Act*, 16-000041/AABS

Date: **August 16, 2016**

File Number: **16-000041/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:

Jordan Thompson

Applicant

and

Intact Insurance Company

Respondent

DECISION ON A PRELIMINARY ISSUE

Panel: Nicole Treksler, Member and J.R. Richards, Vice Chair

Appearances:

For the Applicant: Joelle Sears-Briggs, counsel

For the Respondent: Anna-Marie Musson, counsel; Roxanne Hector and Beata Morris, representatives

Held by Teleconference: July 11, 2016

I. Preliminary Issue:

1. The preliminary issue question has two parts:

First issue:

2. Can the Applicant recover fees/costs from the other party incurred for preparing an application on an issue that was resolved prior to the case conference?

Second issue:

3. If yes, is the applicant entitled to recover the costs of this proceeding pursuant to Rule 19.1 of the LAT Rules of Practice and Procedure?

II. Decision:

4. For the reasons that follow, the Tribunal has the jurisdiction to consider the Applicant's request for costs on an issue that was resolved prior to the case conference.

III. Introduction:

5. The Applicant, Mr. Thompson, was injured in an automobile accident on October 26, 2011 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the "*Schedule*").¹
6. On April 12, 2016, Mr. Thompson submitted an application for dispute resolution services to the Tribunal because Intact Insurance Company ("Intact") had denied his Treatment & Assessment Plan for psychological services dated November 14, 2015 for \$2,320.00.
7. The Tribunal scheduled and held a case conference on June 22, 2015.

The June 22, 2015 Case Conference

8. At the start of the case conference, the parties informed the adjudicator that Intact had approved the Treatment Plan. However, Mr. Thompson wanted to

¹ Note that, pursuant to s. 68 of the *Schedule*, certain accident benefits are *deemed* to be included in a motor vehicle liability policy that is in effect on September 1, 2010, if an accident occurs on or after September 1, 2010 and before the earlier of (a) the first expiry date under the policy and (b) the day on which the policy is terminated by the insurer or the insured.

recover his costs for preparing his application and alleged that the Insurance Company had acted unreasonably.

9. Prior to the case conference, the parties attempted to settle the issues of costs, but were not able to come to an agreement. At the case conference, the settlement discussions continued, but the parties were still not able to resolve the issue in dispute.
10. As the parties could not come to settlement on this issue, the Tribunal, with the agreement of the parties, scheduled a preliminary issue hearing for July 11, 2016.

Preliminary Issue Hearing July 11, 2016

11. After considering the submissions of the parties, the Tribunal decided that this decision would only address the question of whether it has the jurisdiction to consider Mr. Thompson's request for costs after he settled the original dispute with Intact before the case conference.

IV. Analysis:

The Tribunal's Jurisdiction to Award Costs

12. The Tribunal is a creature of statute, which means that its jurisdiction is defined by its governing legislation. The Tribunal's authority to award costs comes from two sources:
 - Section 17.1 of the *Statutory Powers and Procedure Act* ("SPPA"); and
 - Rule 19.1 of the *Rules*
13. Section 17.1(1) of the *SPPA* empowers the Tribunal to order a party to pay another party's costs in a proceeding according to rules made under s. 17.1(4). Section 17.1(2) states the Tribunal shall not order a party to pay costs unless the conduct or course of conduct of that party has been unreasonable, frivolous or vexatious, or has acted in bad faith.
14. Rule 19.1 of the *Rules* mirrors the language of s. 17.1(2) of the *SPPA*, and provides that a party may make a request to the Tribunal for its costs where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith.
15. Prior to April 1, 2016, under s. 282(11) of the *Insurance Act* (the "Act"), an arbitrator's jurisdiction and discretion to award costs was broad. Unlike Rule 19.1,

arbitrators at the Financial Services Commission Ontario (“FSCO”) could consider criteria other than vexatious, unreasonable, frivolous and bad faith behaviour of a party, such as a party’s degree of success in the outcome of the proceeding, the conduct of a party, the failure of a party to comply with undertakings or orders, any written offers to settle, and/or any other matter that the arbitrator considered relevant to awarding costs.²

16. Section 281 (11) of the *Act* was repealed on April 1, 2016. The Tribunal’s opinion is that the repeal of s. 281(11) is a clear statement of legislature’s intent to limit the circumstances where the Tribunal can award costs in a proceeding. However, the repeal of s. 281(11) does not prevent parties from negotiating costs and disbursements between themselves as they settle files.
17. We find that the Tribunal only has jurisdiction to award costs under Rule 19.1 where a party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith.

The Tribunal has Jurisdiction to Consider the Applicant’s Claim for Costs after the Dispute with Intact Settled Prior to the Case Conference

18. Rule 19.1 provides that costs may be requested **in a proceeding** where a party believes that another party has acted unreasonably, frivolously, vexatiously or in bad faith.
19. When does a proceeding begin and end? Rule 2.17 defines “a proceeding” as the “entire Tribunal process from the start of an appeal to the time a matter is finally resolved.” In short, a proceeding starts once the Applicant submits an application to the Tribunal and ends once all issues in dispute between the parties are resolved.
20. Mr. Thompson accepted Intact’s approval of the treatment plan and raised another issue regarding costs. Mr. Thompson was not willing to withdraw the application until Intact paid his costs and disbursements.
21. We are of the view that Mr. Thompson’s acceptance of Intact’s approval of the treatment plan did not end the proceeding.
22. In our opinion, the matter did not stop being a proceeding because the initial issue in dispute had been settled prior to the case conference. A proceeding ends when there is a notice of withdrawal, all issues in dispute have been resolved, or the Tribunal has given its decision after a hearing.
23. In this case, we find that Mr. Thompson could raise the issue of costs during the proceeding, even though the initial issue had been settled, for the following reasons:

² Rule 75.2 of the FSCO’s Practice Code and Section F – Expense Regulation

- The issue of costs was associated with the main issue that was in his Application. It was not a stand-alone issue; and
- Mr. Thompson did not withdraw his application.

24. As such, we find the Tribunal has the jurisdiction to consider Mr. Thompson's request for costs.

V. Decision:

25. The Tribunal has the jurisdiction to award costs but only under Rule 19.1 where a party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith.

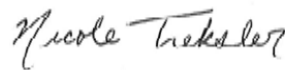
VI. Order:

26. The Tribunal orders a second hearing by teleconference, to consider the following issues:

- Is the Applicant entitled to recover the costs pursuant to Rule 19.1 of the LAT Rules of Practice and Procedure?
- Did the Insurer unreasonably withhold or delay payments to the Applicant pursuant to section 10 of O. Reg. 664?

27. With the agreement of the parties this hearing will take place by teleconference.

Released: August 16, 2016



Nicole Treksler



J. R. Richards